

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3 BEFORE THE HONORABLE GLORIA M. NAVARRO  
4 CHIEF UNITED STATES DISTRICT JUDGE

5 UNITED STATES OF AMERICA, :  
6 Plaintiff, :  
7 vs. : No. 2:16-cr-00100-GMN-CWH  
8 JAN ROUVEN FUECHTENER, :  
9 Defendant. :  
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11 TRANSCRIPT OF EVIDENTIARY HEARING (Day 3)  
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13  
14 April 20, 2018

15  
16 Las Vegas, Nevada  
17

18  
19 FTR No. 7D/20180420 @ 1:49 p.m.  
20

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25 (Proceedings recorded by electronic sound recording,  
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A P P E A R A N C E S

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Also Present:  
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1 LAS VEGAS, NEVADA, APRIL 20, 2018, 1:49 P.M.

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3 P R O C E E D I N G S

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5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: Thank you. You may be seated.

7 COURTROOM ADMINISTRATOR: This is the time set  
8 for the evidentiary hearing, day 3, in case number  
9 2:16-cr-00100-GMN-CWH, United States of America versus Jan  
10 Rouven Fuechtener.

11 Counsel, please make your appearances for the  
12 record.

13 MS. ROOHANI: Good afternoon, Your Honor.  
14 Ellie Roohani and Lisa Cartier-Giroux for the United  
15 States.

16 We are joined at counsel table with Special  
17 Agent Mari Panovich.

18 THE COURT: And good afternoon, Agent Panovich  
19 and Ms. Giroux and Ms. Roohani.

20 MS. CONNOLLY: Karen Connolly appearing with Jan  
21 Rouven Fuechtener, who is present in custody.

22 THE COURT: Good afternoon, Ms. Connolly, and  
23 good afternoon, Mr. Fuechtener.

24 Are we ready to resume hearing testimony in the  
25 case?

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1 MS. CONNOLLY: Yes. Yes.

2 THE COURT: All right. So, Ms. Connolly, you  
3 may call your next witness.

4 MS. CONNOLLY: Jan Rouven Fuechtener.

5 THE COURT: We can go ahead and just swear him  
6 in so that there's no problem.

7 COURTROOM ADMINISTRATOR: Please remain standing  
8 and raise your right hand.

9 You do solemnly swear that the testimony you  
10 shall give in the cause now before the Court shall be the  
11 truth, the whole truth, and nothing but the truth, so help  
12 you God?

13 THE WITNESS: Yes.

14 COURTROOM ADMINISTRATOR: Thank you. You may be  
15 seated.

16 Please state your name for the record.

17 THE WITNESS: Jan Rouven Fuechtener.

18 JAN ROUVEN FUECHTENER

19 called as a witness on behalf of the  
20 Defense, was examined and testified further as follows:

21 DIRECT EXAMINATION (RESUMED)

22 BY MS. CONNOLLY:

23 Q. Jan, we had some discussion previously about the  
24 fact that is (inaudible).

25 There's no light on.

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1                   COURTROOM ADMINISTRATOR: Hold the power. Hold  
2 that button.

3                   MS. CONNOLLY: Hold it?

4                   COURTROOM ADMINISTRATOR: Hold it. Uh-huh.  
5 That's your power.

6 BY MS. CONNOLLY:

7       Q.       We had some discussion previously about English is  
8 not your primary language; right?

9       A.       Yes.

10       Q.       Okay. I'll ask you a couple questions about your  
11 understanding and comprehension of the English language.

12               MS. ROOHANI: Karen, can you speak up? I'm  
13 sorry. I'm having difficulty hearing.

14               MS. CONNOLLY: Okay. It sounds really loud.  
15 BY MS. CONNOLLY:

16       Q.       I'm going to ask you some questions about your  
17 understanding and comprehension of the English language.

18               Have you ever had any formal education in  
19 understanding the English language, or is your knowledge  
20 just based upon communication and conversations with  
21 people?

22       A.       I had English in school in Germany when I was 18 for  
23 a few years. The basics. And then I got better while  
24 talking, mostly on vacations.

25       Q.       Okay. So do you think you have a good grasp of the

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1 English language and that you understand everything that's  
2 spoken and written?

3 A. Yeah, conversational English, when I talk with  
4 people, when I read something.

5 Q. But do you -- is there ever words that you don't  
6 understand that are spoken?

7 A. As this legal thing is progressing, yeah, sometimes  
8 there is -- I have a problem finding the right words to  
9 describe in which state of mind I was or what happened. Or  
10 when I read a court paper -- there's a difference. When I  
11 read it and I can look up words, that's different from  
12 being here and looking for words. I don't have a  
13 dictionary and can look up the best word, what would fit  
14 best.

15 Q. Okay. As the -- you mentioned using a dictionary.  
16 Under what circumstances have you used a dictionary?

17 A. When I get, like, motions or -- I have a legal  
18 dictionary.

19 Q. Oh, at the --

20 A. Yes.

21 Q. In custody you have access to dictionaries?

22 A. Yes. I ordered one.

23 Q. You ordered one while in custody?

24 A. A law dictionary, yeah.

25 Q. And why did you do that?

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1 A. To look up legal words because sometimes there are  
2 little differences which are important.

3 Q. And then what --

4 A. It's from Westlaw. It's like a big, expensive  
5 leather-bound book.

6 Q. And when you received a copy of the guilty plea  
7 agreement, did you have an opportunity to review that with  
8 your dictionary?

9 A. Not then. I bought that later.

10 Q. And you indicated that when Mr. Durham met with you  
11 and you were in custody and he went over the guilty plea  
12 agreement, you didn't actually have a copy of it, he  
13 paraphrased what was in there to you. Was that your --

14 A. Yes.

15 MS. ROOHANI: Objection. That misstates the  
16 testimony.

17 MS. CONNOLLY: I don't believe it does.

18 THE COURT: He said he summarized. Same  
19 difference, paraphrased, summarized. It wasn't word for  
20 word was his testimony.

21 BY MS. CONNOLLY:

22 Q. The day you entered your guilty plea, had you  
23 finished reviewing -- or had Mr. Durham finished discussing  
24 with you the guilty plea at the time that you were notified  
25 it was time to come back into court?

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1 A. No.

2 Q. Did you -- at some point in time, did you continue  
3 to review it with him?

4 A. Yes.

5 Q. And where was that?

6 A. It was here in the courtroom over there on the  
7 right.

8 Q. So that was -- you continued to review it with him  
9 before the judge came in. Was that accurate?

10 A. Yes.

11 Q. Okay. Now, once the judge came in the courtroom,  
12 she provided you what we call a plea colloquy. Do you know  
13 what I'm referring to when I say --

14 A. Yes.

15 Q. -- plea colloquy?

16 And what does that -- what does that mean to  
17 you?

18 A. She goes over putting things in the plea to make  
19 sure that I understand everything.

20 Q. Okay. And, in fact, she spent some time asking you  
21 a number of questions related to the guilty plea agreement?

22 A. Yes.

23 Q. Okay. And one of the questions she asked you was if  
24 you felt that you understood the terms of the plea  
25 agreement. And do you recall what your answer to that was?



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1 A. I think I answered yes.

2 Q. And why did you do that?

3 A. At that time I thought I understood. But obviously  
4 I didn't understand guidelines and the application.

5 Q. Okay.

6 A. I always thought about there is a statutory maximum  
7 and minimum. And when they talked about guidelines I  
8 thought that is -- that is that, like --

9 Q. So you didn't understand the difference between the  
10 statutory minimums and maximums and the guidelines or how  
11 they interplayed?

12 A. No, that -- I thought that is the statute or  
13 maximum/minimum is when they talk about guidelines because  
14 there was never, like, years mentioned.

15 Q. Okay. During your plea colloquy, it was never the  
16 years mentioned in terms of as they relate --

17 A. I don't -- I don't recall that when guidelines were  
18 mentioned that there was, like, the 40 points mentioned or  
19 that they translate to years or to how many years they  
20 translate.

21 Q. Are you talking about during the plea colloquy with  
22 the Court?

23 A. Yes.

24 Q. Okay. And the judge asked you if you had sufficient  
25 time to go over the plea agreement with your lawyers.

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1                   And do you remember what your answer to that  
2 question was?

3       A.       Yes, I answered "Yes."

4       Q.       And why did you respond in that way?

5       A.       I mean, I had time but -- I didn't ask them  
6 questions for things which they didn't explain to me. So  
7 we didn't -- when they didn't -- I didn't ask questions  
8 about the guidelines because they were not explained to me  
9 in the first place, so he -- Mr. Durham went through the  
10 whole thing and --

11      Q.       Well, the --

12      A.       -- there were not more questions, so there were  
13 not -- I mean, we can talk a long time about it. If you  
14 talk about the wrong things, then the longest time is -- is  
15 not enough.

16      Q.       And they didn't have discussions with you about the  
17 guidelines; right?

18      A.       No.

19      Q.       And you remember the judge asking Ms. Roohani if  
20 there had ever been any prior plea offers extended to you.

21                   Do you remember that question?

22      A.       Yes.

23                   MS. ROOHANI: Objection. It misstates Your  
24 Honor's question at the time of the plea colloquy.

25

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1 BY MS. CONNOLLY:

2 Q. Do you remember the Court asking Ms. Roohani this  
3 particular question:

4 Ms. Roohani, were there any formal prior  
5 written offers to plead that were either withdrawn  
6 or rejected?

7 Do you remember that question?

8 A. Yes.

9 Q. And do you remember what the response was from  
10 Ms. Roohani?

11 A. If I recall right, she said there was never a  
12 written offer. There were some talks early on in the  
13 beginning with one lawyer, but it --

14 Q. Okay. If you don't remember specifically what --

15 A. Yeah. I think that's --

16 Q. -- she said, then I don't want you to speculate.

17 A. I think that's --

18 Q. Okay. Do you remember the judge asking you if you  
19 were satisfied with your legal representation; and do you  
20 remember what your response was?

21 A. I said, "Yes."

22 Q. Okay. And why did you say that?

23 A. Because at that time I was. There was nothing more  
24 to say or to do.

25 If I would have known that they didn't explain

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1 to me the guidelines and that 40 points means 24.3 years to  
2 30, I probably would have said, "No, I'm not happy" at that  
3 point.

4 Q. At some point in time did you later become aware of  
5 your exposure under the terms of the guilty plea agreement?

6 A. Yes.

7 Q. And do you remember the Court specifically asking  
8 you if you had sufficient time to talk to your attorneys  
9 about the guidelines and how they might apply to your case?

10 A. Yes.

11 Q. And you responded that yes, you had; right?

12 A. I think so.

13 Q. What do you think would have happened -- or do you  
14 know what would have happened if you would have responded  
15 "No" to any of the judge's questions? Or what did you  
16 think would happen if you responded --

17 A. She would have stopped the proceeding and would have  
18 said, "Well, I think they need some more time."

19 Because I experienced the same thing when I  
20 waived the jury trial and I didn't answer accordingly to  
21 one question and she said, "Well, I think we need to stop  
22 this and he needs more time."

23 Q. Why didn't --

24 A. So --

25 Q. Why didn't you tell the judge you needed more time?

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1       A.       At that moment I -- well, there was no chance. I  
2       mean, there was a point when Ms. Roohani said, "Well, if he  
3       is not accepting to the facts, then we proceed with trial,"  
4       and I knew from what I learned from Mr. Nadig at that point  
5       that with that team --

6               MS. ROOHANI: Objection. Calls for hearsay.

7               MS. CONNOLLY: It's not for the truth of the  
8       matter.

9               MS. ROOHANI: Your Honor --

10              MS. CONNOLLY: It's for his -- it's for his  
11       state of mind and why he did what he did or --

12              THE COURT: Overruled.

13              MS. CONNOLLY: -- said what he said.

14              THE COURT: He can answer as to his state of  
15       mind.

16              MS. CONNOLLY: All right.

17              THE WITNESS: Yeah. At that point in time, as I  
18       said, there was no -- there was no chance to win trial. I  
19       lost trust in my legal team because of what Mr. Nadig said  
20       earlier, that reason back -- and I realized that I had no  
21       other chance. What shall I do, stop at that time and  
22       proceed with a trial where I know I will lose?

23       BY MS. CONNOLLY:

24       Q.       Why did you think you would lose if you proceeded to  
25       trial? Why did you feel that?

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1       A.       Because in the middle of trial my lead attorney came  
2 and asked for a deal if I ever would consider -- if I  
3 ever -- I mean, I can't say what he said, so --

4       Q.       Well, you could say what -- go ahead.

5       A.       He came back into the courtroom and said, "Jan, have  
6 you ever thought about a deal?" And I thought I didn't  
7 hear right.

8               I said, "No, why should I?"

9               That's how that all started.

10      Q.       After you the left the courtroom, you indicated that  
11 you then became aware of your exposure under the  
12 guidelines.

13      A.       Yes.

14      Q.       Okay. And when did you become aware -- when you  
15 say -- okay. When did you become aware of your -- the time  
16 you were looking at, given the guilty plea agreement that  
17 you had signed?

18      A.       Say that again, please.

19      Q.       When did you become aware of how much time you were  
20 actually facing, given the guilty plea agreement that you  
21 had signed?

22      A.       The next day.

23      Q.       And what happened --

24      A.       I see that -- the night that I came back and then  
25 the next time I had dayroom.

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1 Q. And what happened the next day?

2 A. I talked another -- I talked with another inmate.

3 Q. And who was that?

4 A. That was Mr. Bret Humphries.

5 Q. And did you believe that Mr. Humphries had  
6 familiarity with the child pornography guidelines and  
7 statutes?

8 A. Yes.

9 Q. Okay. And so you had discussions with him about --  
10 did you have a copy of your guilty plea agreement at that  
11 point?

12 A. I think so.

13 Q. Okay. And did you give him a copy, or did you  
14 discuss with him --

15 A. No, because we had always -- we talked through a  
16 door. I mean, I could have slipped it to him. But at that  
17 point I didn't -- I gave it to him later but not at point.  
18 We talked about it.

19 Q. Okay. And what did you tell him about it?

20 A. He asked me questions. He asked me --

21 MS. ROOHANI: Objection. Hearsay.

22 MS. CONNOLLY: It's not for the truth of the  
23 matter.

24 MS. ROOHANI: Your Honor, it's for no other  
25 purpose except for its truth.

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1 MS. CONNOLLY: But it's got to do with his state  
2 of mind and why he did what he did, not whether or not what  
3 Mr. Humphries told him was true or not.

4 THE COURT: But Mr. Humphries hasn't testified  
5 yet. So your question is what Mr. Humphries told him?

6 MS. CONNOLLY: Yes. It's not for the truth of  
7 the matter, it's --

8 THE COURT: You can ask him based upon what  
9 Mr. Humphries told him what -- what did you think about  
10 that, or what did you feel, or what conclusion did you  
11 reach, those kind of state-of-mind descriptions.

12 But he can't testify to what Mr. Humphries  
13 actually said.

14 BY MS. CONNOLLY:

15 Q. What did you -- what did you ask Mr. Humphries? Did  
16 you ask him questions? Or did you --

17 A. I came back and stopped in front of his door. And  
18 we talked about how trial was going. And I told him that I  
19 signed a plea. And he was surprised. And he wanted to  
20 know how many years.

21 MS. ROOHANI: Objection. Hearsay.

22 MS. CONNOLLY: Not for the truth of the matter.  
23 (Indiscernible).

24 THE COURT: It is for the truth of the matter  
25 asserted. But I'll allow it as foundational.



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1 MS. CONNOLLY: All right.

2 THE WITNESS: So I can answer?

3 MS. CONNOLLY: Yes.

4 THE WITNESS: Okay. So he asked --

5 THE COURT: Don't tell me what he said, ask me  
6 what -- tell me what your state of mind was after --

7 THE WITNESS: Okay.

8 THE COURT: -- you had a conversation with him.

9 THE WITNESS: I learned of -- so first I learned  
10 that our deals were years out specifically mentioned, so  
11 you know what you get in a way. So I realized, okay, this  
12 is not in my deal. And then I couldn't get an answer of  
13 how many years.

14 Then I had to lock down because I just came  
15 back. It was not my dayroom. When I had a few hours later  
16 dayroom, because I was concerned, I went again and talked  
17 to him.

18 And then I told him about 40 points, that there  
19 are 40 points based on what he wanted to know. So I looked  
20 him up and I told him it is 40 points. And he was a little  
21 bit shocked, in my opinion.

22 BY MS. CONNOLLY:

23 Q. Okay. When he told you what that translated in  
24 terms of years --

25 MS. ROOHANI: Objection.

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1 BY MS. CONNOLLY:

2 Q. -- were you --

3 MS. ROOHANI: Hearsay.

4 THE WITNESS: He couldn't at that point because  
5 we had no more paper, but he knew from his case what --  
6 what he learned from his lawyers.

7 MS. ROOHANI: Objection. Hearsay.

8 MS. CONNOLLY: Again, it's not for the truth of  
9 the matter --

10 THE COURT: He hasn't said --

11 MS. CONNOLLY: -- it's for what he did next.  
12 Foundational.

13 THE COURT: He's not going to say what  
14 Mr. Humphries said. He's doing fine so far. And --

15 THE WITNESS: So where were we?

16 So he --

17 THE COURT: You didn't know what 40 --

18 THE WITNESS: I told him 40 points.

19 And then we talked about that a little bit from  
20 his experience with his lawyer, Paul Riddle.

21 And after that conversation, I learned that  
22 in -- usually sometimes in those cases it comes up to,  
23 like, 32, and that relates to a 33, I think that's what we  
24 talked -- we talked about 33, which would relate to 12 to  
25 14 years.

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1                   So, of course, we were standing there, and if 33  
2 is 12 to 14 at about, then what is 20 -- or what is 40?

3 BY MS. CONNOLLY:

4       Q.       Okay. Did you have any discussion about  
5 any enhancements or variances or anything of that nature  
6 with Mr. Humphries?

7       A.       Yeah, a little bit.

8       Q.       Did you have discussion about --

9       A.       He explained me how that works.

10      Q.       Okay. So --

11      A.       So we basically --

12      Q.       Without --

13      A.       I knew when -- when 32 or 33 is 12 to 14 years, then  
14 I know that if you -- by logic -- I mean, I -- I already  
15 guessed it's over 20.

16      Q.       Okay.

17      A.       And when I learned that, the next morning I  
18 immediately called my lawyer.

19      Q.       Okay. So my next question was, so the next morning  
20 you contacted Mr. Marchese?

21      A.       Yes.

22      Q.       And why did you do that?

23      A.       To clarify that important thing with the guidelines.

24      Q.       Okay. Did Mr. Marchese and Mr. Durham and  
25 Mr. Sanft, did anybody discuss with you that based upon the

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1 facts that you had admitted that there could be some points  
2 that could apply that were not specifically addressed in  
3 the guilty plea agreement under the portion that talked  
4 about the points that would apply?

5 A. No.

6 Q. So you contacted Mr. Marchese a long time before you  
7 received the presentence investigation report; right?

8 A. Yes.

9 Q. And at some point you communicated -- did you  
10 communicate to Mr. Marchese that you wanted to stay with  
11 the plea or you wanted to withdraw the plea?

12 MS. ROOHANI: Objection. Leading.

13 THE COURT: Overruled. He can answer the  
14 question.

15 THE WITNESS: I called him the next morning, and  
16 we talked about that. I voiced my concerns.

17 He said, "Jan, I will come over."

18 He came over a few hours later with Mr. Pacitti.  
19 And we had a long talk.

20 BY MS. CONNOLLY:

21 Q. Okay. At that point was it -- did you -- what did  
22 you communicate --

23 A. I told him I want to withdraw that plea.

24 Q. And then did you have another -- was there any  
25 discussion about doing it right then or waiting? What did

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1 you decide to do after your meeting with him?

2 A. We had a conversation, and based upon that, I -- he  
3 wanted to wait.

4 MS. ROOHANI: Objection. Hearsay.

5 MS. CONNOLLY: It's not for the truth of the  
6 matter, it's for why -- a foundation for why he did what he  
7 did.

8 THE COURT: Well, it sounds like it is offered  
9 for the truth of the matter asserted.

10 MS. ROOHANI: And it's nonresponsive to her  
11 question, Your Honor.

12 THE COURT: The objection is sustained.

13 BY MS. CONNOLLY:

14 Q. Did you decide to immediately move to withdraw the  
15 plea? Or what did you do next, after your discussion with  
16 Mr. Marchese?

17 A. I --

18 Q. In terms of what did you do next in terms of --

19 A. I told another lawyer to hire -- I called another  
20 lawyer to hire him to file a motion to withdraw the guilty  
21 plea.

22 Q. Okay. And did you hire that lawyer ultimately, or  
23 did you enter -- what did you do?

24 A. No.

25 Q. Why did you decide to -- you needed to get a

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1 different lawyer to withdraw the guilty plea versus having  
2 Mr. Marchese or Mr. Sanft or Mr. Durham file that on your  
3 behalf?

4 A. After the meeting with him and Mr. Pacitti -- with  
5 Mr. Marchese and Mr. Pacitti, I felt that he wouldn't do  
6 that or wouldn't do that in my interest or --

7 Q. Was there any mention of there being a conflict,  
8 that you needed to get different counsel?

9 MS. ROOHANI: Objection. Hearsay.

10 MS. CONNOLLY: It's not for the truth of the  
11 matter. It's why he did what he did.

12 They're making an issue, say he waited so long  
13 to withdraw his plea. So this is relevant to why he waited  
14 to withdraw his plea, not to the truth of whatever was  
15 said.

16 THE COURT: Well, he said that he told  
17 Mr. Marchese and Mr. Pacitti during the visit that he  
18 wanted to withdraw the plea but Mr. Marchese did not, as  
19 far as he know, file a motion to withdraw the plea.

20 And so he called a different lawyer to try to  
21 hire that lawyer to withdraw the plea but then did not hire  
22 a different lawyer? So where are you -- so your next  
23 question is just --

24 MS. CONNOLLY: Well, my issue is, is the  
25 government earlier had made an issue of why he waited so

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1 long to file the motion to withdraw the plea, implying that  
2 it wasn't something he wanted to do close in time to the  
3 entry of the plea, so why he did -- why he waited is  
4 relevant. It's not for the truth of what was said to him.

5 THE COURT: So ask him that. Why did he wait?  
6 Why didn't he continue to persist?

7 BY MS. CONNOLLY:

8 Q. Why did you not immediately file a motion to  
9 withdraw the guilty plea after your discussions with  
10 Marchese?

11 A. I called one lawyer, and he wanted to come visit me  
12 in Henderson. It was -- I called that lawyer a few times  
13 in the first two weeks of December. First I had to get the  
14 number because I have no phone book there and I can't look  
15 up things. And I don't know -- there is not a list on the  
16 wall with lawyers. There's a list with public defenders,  
17 but I didn't qualify at that time for a public defender, so  
18 I had to get numbers of lawyers.

19 And I was in segregation on top of that; so that  
20 was extremely difficult to get numbers of lawyers I could  
21 call. Because I wasn't at home, that was an extremely  
22 difficult process and that took a while.

23 And then I called in the first two weeks of  
24 December. This is right before Christmas. So the lawyer I  
25 called wanted to come visit me before Christmas, but he

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1 then said I need --

2 MS. ROOHANI: Objection. Hearsay.

3 THE WITNESS: Oh, I learned from him that --

4 MS. CONNOLLY: It's not for the truth of the  
5 matter. It's for foundation on why he waited.

6 If they're not going to make an issue of his  
7 delay, then I don't need to go down here. But if they're  
8 alleging that he delayed and he didn't really want to  
9 withdraw his plea because he waited so long, then it's  
10 relevant.

11 MS. ROOHANI: And, Your Honor, he's not  
12 answering the question that's being posed to him.

13 MS. CONNOLLY: Yes, he did.

14 THE COURT: The question was why didn't he file  
15 the motion to withdraw his plea.

16 MS. CONNOLLY: And he's explaining why he  
17 didn't. It's not a one-word answer.

18 THE COURT: Okay. So he didn't have a phone  
19 number for a different attorney. All that they had posted  
20 was the Federal Public Defender number, and he did not  
21 qualify for the Federal Public Defender. He was in  
22 segregation, so it was difficult to find a list of lawyer  
23 numbers to call.

24 BY MS. CONNOLLY:

25 Q. Okay. And then what did you do?



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1       A.       And then I got moved in January to Pahrump. Then I  
2 lost the number of the lawyers I called and had to stop  
3 that whole process from there again.

4               But there it was a little bit easier because  
5 there was a case manager with an office I could go in, they  
6 could look up numbers. And I started the whole process.

7               Then I called that lawyer I called already in  
8 Henderson and asked what was going on, why he didn't visit  
9 me.

10              And he said, "Well, I didn't" --

11              MS. ROOHANI: Objection, Your Honor.

12              THE COURT: Sustained.

13 BY MS. CONNOLLY:

14       Q.       What did you do next?

15       A.       The problem was that --

16       Q.       How many lawyers did you talk to?

17       A.       -- lawyers couldn't -- I called four to -- I called  
18 four, and then two gave me other two numbers. I called six  
19 lawyers altogether.

20              But the big problem was they said, "We can't  
21 come" --

22              MS. ROOHANI: Objection.

23              THE COURT: Sustained.

24              THE WITNESS: -- "visit you."

25              THE COURT: Sustained. Stricken.

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1 BY MS. CONNOLLY:

2 Q. Was there difficulties -- did you get diff- -- have  
3 difficulties in having a lawyer come visit you due to the  
4 fact that you were out in Pahrump, which is a three-hour --

5 MS. ROOHANI: Objection. Leading.

6 THE COURT: Sustained.

7 BY MS. CONNOLLY:

8 Q. Did you have difficulty getting lawyers to come  
9 visit you in Pahrump?

10 A. Yes.

11 Q. And how many lawyers came to visit you in Pahrump,  
12 to talk to you about withdrawing your plea? Or  
13 representing you?

14 A. Four.

15 Q. And then ultimately you hired me; correct?

16 A. Yes.

17 Q. Do you recall when it was you hired me?

18 A. Huh?

19 Q. Do you remember when it was you hired me?

20 A. It was -- I think we met the first time in April or  
21 May of last year. And after you got permission from my  
22 previous lawyers and that --

23 Q. Let me ask you. So my question was, do you remember  
24 hiring me in April or May of last year?

25 A. Yes.

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1 Q. And you had interviewed -- you indicated -- was it  
2 your testimony you had interviewed a number of lawyers?

3 A. Yes.

4 Q. Okay. And did these lawyers request money from you  
5 to represent you?

6 A. Yes.

7 Q. And nobody was offering to do it for free?

8 A. No.

9 Q. Okay. Did you have access to your own money while  
10 incarcerated?

11 A. No.

12 MS. CONNOLLY: I don't have anything else at  
13 this time.

14 THE COURT: Ms. Roohani or Ms. Cartier-Giroux?

15 MS. CONNOLLY: Do you want me to take this off?  
16 Leave it on?

17 COURTROOM ADMINISTRATOR: Just mute it. Just  
18 push it once.

19 CROSS-EXAMINATION

20 BY MS. ROOHANI:

21 Q. Hi, Jan. How are you?

22 A. I'm fine. How are you?

23 Q. I'm good. I wanted to talk a little bit just about  
24 you for a few minutes if that's okay?

25 A. Yes.

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- 1 Q. You were an entertainer; correct?
- 2 A. Yes.
- 3 Q. And you had a show on The Strip?
- 4 A. Yes.
- 5 Q. At the Tropicana Hotel?
- 6 A. Yes.
- 7 Q. And you were the headliner of that show?
- 8 A. Yes.
- 9 Q. I believe your face was on a billboard outside the
- 10 Tropicana for a lengthy period of time?
- 11 A. Yes.
- 12 Q. And your show -- how many nights a week did that
- 13 show run?
- 14 A. Six nights a week.
- 15 Q. Six nights a week.
- 16 And part of that show was drama? There was
- 17 lights, pyrotechnics; correct?
- 18 A. No, we didn't have pyro, but we had lights.
- 19 Q. Lights. Okay.
- 20 A. Yes.
- 21 Q. You had choreography?
- 22 A. Yes.
- 23 Q. You had other people working for you?
- 24 A. Yes.
- 25 Q. It was show biz; right?

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1 A. Yes.

2 Q. Acting? Part of that --

3 A. I never -- I always was myself, but, yeah.

4 Q. You were yourself. But it was a persona.

5 Are you acting the same way here today that you  
6 acted in your show?

7 MS. CONNOLLY: I'm going to object. He  
8 indicated he didn't act.

9 BY MS. ROOHANI:

10 Q. The way you're answering questions for me today and  
11 for Ms. Connolly today, is that the same way that you spoke  
12 in your show?

13 A. I would think so.

14 Q. Was it a little bit more pizzazz in your show?

15 It's not a trick question. I just want to know  
16 about --

17 A. What was the word? What --

18 Q. Was it more energetic in your show?

19 MS. CONNOLLY: Objection. She's not letting him  
20 answer the question. She just keeps throwing them at him.  
21 Argumentative.

22 BY MS. ROOHANI:

23 Q. Tell me about your show. Talk to me about your  
24 show.

25 MS. CONNOLLY: Objection. It's an improper

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1 question. "Talk to me about the show." It's not a  
2 question.

3 MS. ROOHANI: Your Honor?

4 THE COURT: I'm not sure it's relevant enough  
5 just to ask him to talk about the show. You want to --

6 BY MS. ROOHANI:

7 Q. Tell me --

8 THE COURT: -- focus it?

9 BY MS. ROOHANI:

10 Q. Tell me about some of the different parts of your  
11 show. What are some of the tricks that you did in your  
12 show?

13 MS. CONNOLLY: Objection. Relevance.

14 MS. ROOHANI: Your Honor, it's absolutely  
15 relevant. It goes to bias. It goes to motivation.

16 MS. CONNOLLY: Bias and motivation?

17 MS. ROOHANI: Which is always relevant as --

18 MS. CONNOLLY: Well, bias --

19 MS. ROOHANI: -- cross-examination.

20 MS. CONNOLLY: -- and motivation is relevant.

21 But how does what he did in his show have to show bias or  
22 motivation?

23 THE COURT: Well, I think we're getting at  
24 credibility and truthfulness, and she can certainly ask  
25 questions about whether he has a character persona, whether

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1 he has acting experience or training and so forth.

2 BY MS. ROOHANI:

3 Q. So, Jan --

4 A. Yeah.

5 Q. -- tell me a little bit about your show.

6 MS. CONNOLLY: I'm going to object to the form  
7 of the question.

8 THE COURT: Ask a more specific question than  
9 just "Tell me about your show."

10 BY MS. ROOHANI:

11 Q. Did you do different illusions in your show?

12 A. Yes.

13 Q. And as part of those different illusions, did you  
14 sometimes interact with your audience?

15 A. Yes.

16 Q. And in interacting with your audience, you had to  
17 speak to them?

18 A. Yes.

19 Q. And when you spoke to them, you spoke to them in  
20 English, I'm presuming?

21 A. Yes.

22 Q. And you had a microphone on when you were  
23 performing?

24 A. Yes.

25 Q. And when you were performing you spoke loudly, I'm

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1 assuming?

2 A. Yes.

3 Q. And you had to have energy during your show because  
4 you had to get your audience worked up; right?

5 A. I always was myself, and that was my -- my big  
6 advantage. I never had, like, a rehearsed text.

7 I mean, it was a certain routine every day, but  
8 my standalone point was that I was very (indiscernible) and  
9 myself, and it wasn't like a -- like a -- sometimes you go  
10 to shows and you see it's like they just do what they do  
11 every day, and it's not the person itself.

12 Q. Okay. So it's your testimony that the way that  
13 you're speaking here in court today was the same way that  
14 you spoke in your show?

15 A. With one difference. What I did there was routine.  
16 I did it every day. This is a one-of-a-kind situation.

17 Q. Okay. So you're more authentic here or your more  
18 authentic in your show?

19 A. I think it has nothing to do with being authentic.  
20 It's --

21 Q. Well, let me ask -- Jan?

22 A. Uh-huh.

23 Q. I get to ask you questions --

24 MS. CONNOLLY: Your Honor, I would object to her  
25 cutting him off every time she doesn't get the answer that



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1 she wants.

2 MS. ROOHANI: Because he's not answering the  
3 question --

4 MS. CONNOLLY: He can't answer the question.  
5 You cut him off.

6 THE COURT: Overruled. He wasn't answering the  
7 question.

8 Go ahead, Ms. Roohani.

9 MS. ROOHANI: Okay.

10 BY MS. ROOHANI:

11 Q. So I'm going to ask you a question. If you don't  
12 understand the question, ask me and I can rephrase it and I  
13 can repeat it. But just answer the question that I'm  
14 asking you.

15 Do you think that you're more authentic here,  
16 because this is a unique situation, or do you think you're  
17 more authentic in your show? There's one option. It's  
18 either here or the show. Those are the two options that  
19 I've given you. So pick one of those two.

20 A. Or not the same -- cannot be the same?

21 THE COURT: He doesn't have to pick one of the  
22 two. It could be or the same in both --

23 THE WITNESS: No, it's the same.

24 THE COURT: -- or in --

25 MS. ROOHANI: The same --

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1 THE COURT: -- or neither.

2 BY MS. ROOHANI:

3 Q. Same authenticity here as in your show. Is that  
4 your testimony?

5 A. Yeah.

6 Q. Okay. You had a strong fan base?

7 A. Yes.

8 Q. And there's some of your fans who came to the trial?

9 MS. CONNOLLY: Objection --

10 THE WITNESS: Yes.

11 MS. CONNOLLY: -- relevance.

12 THE WITNESS: Yes.

13 MS. ROOHANI: Your Honor, it goes to  
14 credibility, bias, and motivation.

15 MS. CONNOLLY: Why the fans came to his show?

16 THE COURT: Overruled.

17 BY MS. ROOHANI:

18 Q. Fans came to the trial?

19 A. Yeah, I think so.

20 Q. There's fans in the courtroom here today?

21 A. Yes.

22 Q. And --

23 A. One.

24 Q. One fan.

25 And she's come to almost all of your hearings.

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1 So you have a strong fan base?

2 A. Yes.

3 Q. And your show was in English?

4 A. Yes.

5 Q. And you received many awards as part of that show?

6 A. Yes. Not part of that show, part of shows I did in  
7 Germany too.

8 Q. You're a good magician, illusionist?

9 A. That's you to --

10 Q. Other people --

11 A. -- judge.

12 Q. Okay.

13 MS. CONNOLLY: Objection. She's doing it again,  
14 not letting him answer the question and talking over him.

15 THE COURT: Overruled. Go ahead.

16 BY MS. ROOHANI:

17 Q. You were voted Best Magic Show in Las Vegas in 2015?

18 A. By the Review Journal, yes.

19 Q. You were. And you're a good showman?

20 A. I would hope so.

21 Q. And Mari came to watch your show?

22 A. That's what she told me.

23 Q. She told you she enjoyed your show?

24 A. She told me she saw the show.

25 MS. CONNOLLY: Objection. Calls for hearsay.

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1 THE WITNESS: I don't know if she saw it, but  
2 she told me she saw it.

3 MS. ROOHANI: Okay.

4 THE WITNESS: Oh, from what she said, I think  
5 she -- she talked about some -- I think she must have seen  
6 it to talk about that.

7 MS. CONNOLLY: Object again to hearsay.

8 THE COURT: Is it hearsay, Ms. Roohani?

9 MS. ROOHANI: It's being offered to show his  
10 motivation, Your Honor. It's state of mind. Not for the  
11 truth of whether Ms. Panovich actually went to watch the  
12 show or not or what she actually told him.

13 MS. CONNOLLY: Relevance of what somebody else  
14 came to see your show.

15 THE COURT: You didn't ask him if he believed  
16 her.

17 MS. ROOHANI: I think he's effectively answered  
18 that, Your Honor.

19 I can move on. No big deal.

20 BY MS. ROOHANI:

21 Q. And, Mr. Rouven, you were voted Best Illusionist in  
22 Las Vegas because you got people to believe in your  
23 illusions?

24 MS. CONNOLLY: Objection. Compound question.

25 MS. ROOHANI: It's not compound.

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1 THE COURT: No, it's not impound. Overruled.

2 BY MS. ROOHANI:

3 Q. Correct?

4 A. No.

5 Q. You didn't get people to believe in your illusions?

6 A. It has -- that has nothing to do with the award.

7 MS. CONNOLLY: Objection. Calls for speculation  
8 as to what he got other people to believe or not believe.

9 THE COURT: Well, he's voted Best Magic Show.  
10 He's an illusionist. Overruled.

11 BY MS. ROOHANI:

12 Q. You didn't get people to believe in your illusions?

13 MS. CONNOLLY: Again, object --

14 THE WITNESS: I would think so.

15 BY MS. ROOHANI:

16 Q. Okay. Not trick questions, Jan. I'm not here to  
17 trick you --

18 A. Well, then --

19 MS. CONNOLLY: Objection. This is not --

20 BY MS. ROOHANI:

21 Q. -- I just want to get to the --

22 A. -- it has --

23 MS. CONNOLLY: -- a question.

24 BY MS. ROOHANI:

25 Q. -- truth.

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1 A. -- nothing to do with the awards.

2 Q. Okay. Let's talk about some of the things that you  
3 talked with Karen about. Okay?

4 You were born in Germany?

5 A. Yes.

6 Q. And you started visiting the United States when you  
7 were 18 years old; correct?

8 A. Yes.

9 Q. And you told Karen on direct that you began learning  
10 English when you were in Germany?

11 A. Yes.

12 Q. And you used English when you came and you visited  
13 here from the time that you were 18?

14 A. Yes.

15 Q. Okay. And you came here multiple times from the  
16 time that you were 18 until you eventually moved here; is  
17 that right?

18 A. Yes.

19 Q. And you eventually finally moved here in 2010?

20 Well, that's what you testified on direct;  
21 right?

22 A. Yes. End of 2010.

23 Q. I believe you said November of 2010 --

24 A. Yes.

25 Q. -- you moved here?

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1                   And you swore under oath on direct that you were  
2                   fluent in English. Do you remember that?

3           A.       Yes.

4           Q.       I believe you said it multiple times; correct?

5           A.       I don't recall.

6           Q.       You told us once on Monday that you were fluent in  
7                   English; is that right?

8                   MS. CONNOLLY: Objection. Asked and answered.  
9                   He's already said he testified he was fluent in English.

10                  MS. ROOHANI: He said he didn't know, Your  
11                  Honor, so I'm attempting to clarify.

12                  MS. CONNOLLY: No, he didn't know how many --

13                  THE COURT: Overruled. He may answer the  
14                  question --

15                  MS. CONNOLLY: -- times he said it.

16                  THE COURT: -- and clarify.

17           BY MS. ROOHANI:

18           Q.       On Monday you told us you were fluent in English; is  
19                   that right?

20           A.       If you have that on the record, then that's right.

21           Q.       And today when you were talking with Karen, again --  
22                   you told us again that you were fluent in English; is that  
23                   correct?

24           A.       Yes.

25           Q.       I want you to tell me since 2010, when you moved

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1 here, tell me every time that you've used a German  
2 translator when looking at legal papers.

3 A. Every time.

4 Q. Tell me how many times you've used a German  
5 translator to look at legal papers first. Let's start  
6 there. How many times total?

7 A. Six times.

8 Q. Six times. All right. Tell me about the first  
9 time.

10 A. First time was the contract we signed with the  
11 Clarion Hotel on Convention Center Drive.

12 Q. And you hired a German translator for that?

13 A. It was -- it was someone we knew and trusted.

14 Q. Someone you knew and trusted, but somebody  
15 translated it out for you?

16 A. Parts of it, big parts of it, most parts.

17 Q. That's the first time.

18 A. The legal parts of it.

19 Q. Tell me about the second time.

20 A. The second time was when we moved the show to the  
21 Riviera. There was a new different contract, and we had  
22 some things -- we didn't understand certain things and  
23 couldn't look them up.

24 Q. When you say "We," you mean you?

25 A. Me and my husband and business partner Frank.



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1 Q. Okay. So you got a translator there too?

2 A. We got parts translated.

3 Q. Did you hire that person?

4 A. We didn't pay for it, but it was someone we -- we  
5 knew and trusted who helped us from Germany with that.

6 Q. Okay. Third time?

7 A. Third time was when we renewed that contract a year  
8 later because there was a change in management and in the  
9 union, so they added a bigger part.

10 Q. And so you used that translator to translate just  
11 that one part?

12 A. I think there was one part we got a different person  
13 to clarify.

14 Q. So you've now used two translators. Okay.

15 A. Uh-huh.

16 Q. Fourth time you used a translator?

17 A. Fourth time was that next year there was a new  
18 contract.

19 Q. With the Riviera?

20 A. Yeah.

21 Q. Fifth time, please?

22 A. And then the last year there was a change -- I mean,  
23 I have to -- it's been a while.

24 Q. Okay.

25 A. So but you just -- you don't need to know the

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1 details, you want to know --

2 Q. Where was the -- who was the contract --

3 A. It was the last contract at the Riviera.

4 Q. Riviera. Any other times?

5 A. And then we asked that same person -- we always  
6 asked when we had the contract at the Tropicana.

7 Q. Okay. So six times when you've dealt with contracts  
8 you've talked to a translator?

9 A. Yes.

10 Q. And that Tropicana contract, that's the contract  
11 that Steve Pacitti wrote up for you?

12 A. He looked over it too, but that wasn't the German  
13 translator.

14 Q. I understand that. But the --

15 A. It was another time.

16 Q. It was a different Tropicana contract?

17 A. No, that was the -- we just had -- well, we  
18 didn't -- technically we had two -- but that was the same  
19 contract, the first contract end of -- I start at the end  
20 of 2014.

21 Q. Okay.

22 A. It was that contract.

23 Q. Fair enough. So total of six times since you've  
24 been in the United States you've used a translator for  
25 legal documents?

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1 A. Yes.

2 Q. Okay. Let's talk about that a little bit more,  
3 okay?

4 A. Yes.

5 Q. Contracts with Steve Pacitti.

6 Mr. Pacitti negotiated some contracts with you;  
7 correct? Or for you?

8 A. Yes.

9 Q. And that was with the Tropicana?

10 A. Yes.

11 Q. And that dealt with your show?

12 A. Yes.

13 Q. And your show actually continued through to January  
14 of 2016; is that right? Or February of 2016?

15 A. March.

16 Q. March of 2016. Okay.

17 A. Yes.

18 Q. But the last contract that you used a translator for  
19 was a 2014 Tropicana contract?

20 A. That was the one which runs from November 2014 to  
21 November --

22 Q. 2015?

23 A. -- 2015. And then there was a new one.

24 Q. Okay. That contract dealt with money, how much the  
25 Tropicana was going to pay you?

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- 1       A.     No.    They didn't pay us.
- 2       Q.     The Tropicana did not pay you?
- 3       A.     No.
- 4       Q.     You paid the Tropicana to perform?
- 5       A.     I can explain.   I can go into detail -- it's like  
6 not a yes/no question.
- 7       Q.     All right.   That's fine.
- 8               There were some legal obligations in the  
9 contract; fair to say?
- 10      A.     Yes.
- 11      Q.     You were going to do some things, and the Tropicana  
12 was going to do some things?
- 13      A.     Yes.
- 14      Q.     All right.   That agreement was in English?
- 15      A.     Yes.
- 16      Q.     And specifically I'm talking about the November 2015  
17 contract that you were performing under when you were  
18 arrested in this case.   That was in English?
- 19      A.     Yes.
- 20      Q.     Have you ever had a contract with the Tropicana  
21 written in German?
- 22      A.     They translated parts we got the year before.
- 23      Q.     The contract that you got from the Tropicana, was it  
24 ever written in German, or was it written in English?
- 25      A.     In English.

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1 Q. Okay. And you read that agreement? I'm  
2 specifically talking about the November '15 --

3 A. I didn't read the whole agreement, no.

4 Q. Do you typically sign agreements that you don't  
5 read, Mr. Fuechtener?

6 A. Yes.

7 Q. You do do that?

8 A. Sometimes.

9 Q. And you understand that there's legal obligations  
10 that come along with agreements; right?

11 Yes-or-no question.

12 A. In that case --

13 Q. Yes-or-no question, Mr. --

14 MS. CONNOLLY: Judge, I object. She's --

15 BY MS. ROOHANI:

16 Q. You understand --

17 MS. CONNOLLY: -- not letting him answer. It's  
18 not a yes-or-no question.

19 THE WITNESS: Yeah, it's not a yes/no. I have  
20 to go into detail a little bit.

21 BY MS. ROOHANI:

22 Q. Okay. So it's not a yes-or-no question whether you  
23 realized --

24 A. Let's put like this. If I -- if there --

25 Q. -- that there's legal --

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1 A. -- is a legal obligation --

2 Q. No, no, no, no. Mr. Fuechtener, there's no pending  
3 question.

4 A. Okay.

5 Q. Let me ask the question. If there's something  
6 Ms. Connolly wants to ask you, she's going to get back up  
7 here and ask you. Okay?

8 A. Uh-huh.

9 Q. So if you only answer my questions, we'll go through  
10 this a lot faster. Okay?

11 A. Okay.

12 Q. All right. So you don't understand that when you  
13 sign a contract there might be legal implications --

14 A. Yes.

15 Q. -- to that contract?

16 You understand that?

17 A. Yes.

18 Q. And understanding that, you still sign contracts  
19 that you haven't read?

20 Yes-or-no question.

21 A. Yes.

22 Q. Okay. And that 2015 agreement with the Tropicana,  
23 you didn't have that contract translated?

24 MS. CONNOLLY: Asked and answered. Objection.

25 THE WITNESS: We had that German translator we

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1       talked about.

2       BY MS. ROOHANI:

3       Q.       Okay. So that was for the 2014 contract. I'm  
4       talking about the 2015 contract.

5                You previously testified that he did not  
6       translate the 2015 contract. Are you changing your  
7       testimony?

8       A.       No, the '15 was --

9                MS. CONNOLLY: Objection, misstates --

10          THE WITNESS: -- a renewal.

11          MS. CONNOLLY: -- his testimony.

12          THE WITNESS: It was pretty much the same.

13       BY MS. ROOHANI:

14       Q.       Okay. So you did not have the 2015 contract  
15       translated into German?

16       A.       I don't recall signing that because it was a  
17       renewal. I have a manager who can sign in my name.

18       Q.       Okay.

19       A.       I mean --

20       Q.       Mr. Fuechtener, you're --

21       A.       -- it's complicated.

22       Q.       Okay. Fair enough.

23                You bought a house?

24       A.       Yes.

25       Q.       You bought two houses when you were in Las Vegas;

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- 1 right?
- 2 A. Yes.
- 3 Q. Those houses were in your name?
- 4 A. In our name.
- 5 Q. Your name and Frank's name?
- 6 A. Uh-huh.
- 7 Q. And that also dealt with legal obligations?
- 8 A. Yes.
- 9 Q. You had to pay the bank? The bank gave you some
- 10 money; fair to say?
- 11 A. No.
- 12 Q. Okay. Who did you buy the house from?
- 13 A. Ask that again.
- 14 Q. Who did you buy the house from?
- 15 A. From previous owners.
- 16 Q. Okay. Did you pay all cash for that house?
- 17 A. Yes.
- 18 Q. Did you sign a deed related to that house?
- 19 A. What is that?
- 20 Q. You don't know what a deed is?
- 21 A. If I'm correct, that is a -- a land -- is that a
- 22 land document?
- 23 Q. Yes, that's a document that --
- 24 A. -- that you own a part of land? Okay.
- 25 Q. Okay.



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- 1 A. Yeah, then I --
- 2 Q. The house was in your name?
- 3 A. Yeah, in our name.
- 4 Q. You didn't buy the house -- nobody gave you a house
- 5 for free. Would that be fair to say?
- 6 A. No.
- 7 Q. All right. You paid some money for that house?
- 8 A. Yes.
- 9 Q. There's some documents that you signed --
- 10 A. Yes.
- 11 Q. -- related to that house?
- 12 A. Yes.
- 13 Q. Those documents were in English?
- 14 A. Yes.
- 15 Q. They were legal documents?
- 16 A. Yes.
- 17 Q. And you did not have those translated into German?
- 18 A. No.
- 19 Q. You signed those documents?
- 20 A. Yes.
- 21 Q. You read those documents before you signed them?
- 22 A. Yes.
- 23 Q. Didn't ask for a German translator for those
- 24 documents?
- 25 A. No.

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- 1 Q. You had a trust agreement with your husband?
- 2 A. Yes.
- 3 Q. That was a pretty complicated trust agreement?
- 4 A. I don't think so.
- 5 Q. You think it was an easy trust agreement?
- 6 A. It got explained to us from a expert and that like a
- 7 family law firm --
- 8 Q. Okay. Explained to you --
- 9 A. -- who went over it.
- 10 Q. Explained to you in English?
- 11 A. Yes.
- 12 Q. You didn't get a German translator for that?
- 13 A. No.
- 14 Q. You understood that you were entering into that
- 15 agreement to avoid probate; correct?
- 16 A. At that time, no.
- 17 Q. So you thought you were entering an agreement, and
- 18 you had no idea what that agreement was about?
- 19 A. Well, we had a -- we had a purpose, but it was that
- 20 purpose.
- 21 Q. Okay. A legal purpose for signing that document?
- 22 A. Yeah, you could -- yeah, you could call it a legal
- 23 purpose.
- 24 Q. Okay. And you read that agreement?
- 25 A. Yes.

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1 Q. You understood that agreement?

2 A. Yes.

3 Q. It dealt with money?

4 A. It -- what I remembered was for the house.

5 Q. Okay. So --

6 A. I mean --

7 Q. -- assets, money, houses, dealt with --

8 A. It was things I never really dealt with. That was  
9 my husband's part. He dealt with it.

10 And to be honest with you, I mean -- what -- did  
11 that answer your question?

12 Q. You signed that agreement?

13 A. I signed it, yes.

14 Q. Did you understand that agreement when you signed  
15 it?

16 A. For the most part, yeah.

17 Q. Are you in the habit of signing agreements you don't  
18 understand, Mr. Fuechtener?

19 A. Say that again.

20 Q. Are you in the habit of signing agreements that you  
21 don't understand?

22 A. Sometimes if someone else who I trust looked over  
23 and said it's okay to sign.

24 Q. So Frank told you it was okay to sign it?

25 A. Yes.

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1 Q. You didn't ask for a German translator for that  
2 agreement?

3 A. No. It wasn't that important for me.

4 Q. Oh, your house wasn't that important to you,  
5 Mr. Fuechtener?

6 A. It wasn't as important as my life --

7 Q. Okay.

8 A. -- like this is.

9 Q. Hold on.

10 Did you tell your husband on a jail call to  
11 protect the houses, Mr. Fuechtener?

12 A. I don't recall that.

13 Q. So if I have a copy of a jail call where you talked  
14 to your husband about protecting the houses, your testimony  
15 is still that you didn't care about the houses and they  
16 weren't that important?

17 A. I talked in German with him. You say "protect."  
18 That's a translation. So I would need to hear it and  
19 then --

20 Q. Okay. Fair enough.

21 A. I need the context.

22 Q. All right. Fair enough.

23 You were there the morning that Mari executed  
24 the search warrant at your house?

25 A. Yes.

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1 Q. And Mari talked to you that morning?

2 A. Yes.

3 Q. She told you what she was looking for?

4 A. Yes.

5 Q. She told you she was investigating somebody who was  
6 downloading and sharing child pornography over the  
7 Internet?

8 A. She talked about downloading in the morning when we  
9 talked.

10 Q. And she was talking about child pornography?

11 A. Yes.

12 MS. CONNOLLY: I'm going to object to relevance.  
13 It's beyond the scope of direct.

14 THE COURT: Ms. Roohani?

15 MS. ROOHANI: Mr. Fuechtener conducted extensive  
16 conversations and has signed multiple documents in English.  
17 There's certainly been an insinuation that he wasn't fluent  
18 or didn't understand what was going on.

19 I think I'm allowed to probe this.

20 MS. CONNOLLY: He's never said he didn't  
21 understand the spoken language.

22 THE COURT: What is --

23 MS. ROOHANI: It goes to bias and motivation as  
24 well, Your Honor, his credibility.

25 MS. CONNOLLY: It's got nothing to do with bias

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1 and motivation.

2 THE COURT: Communication with Special Agent  
3 Panovich, Mari Panovich, how does that relate to his bias?

4 MS. ROOHANI: He understands legal  
5 ramifications, Your Honor. He understands how to -- the  
6 nuances of the English language and legal intricacies, and  
7 that's what I'm attempting to probe here.

8 And I'm just laying the foundation for a few  
9 questions, if you'll let me -- give me a little bit of  
10 latitude here.

11 THE COURT: All right. If that's the direction  
12 you're going.

13 MS. ROOHANI: Okay.

14 THE COURT: Objection overruled.

15 BY MS. ROOHANI:

16 Q. You knew that Mari was investigating child  
17 pornography?

18 A. Yes.

19 Q. You knew that there were serious charges involved  
20 with child pornography in this country?

21 A. No.

22 Q. You thought that there was no serious consequences  
23 for having child pornography?

24 A. Not consequences like this.

25 Q. Okay. You knew that when you spoke with an FBI

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1 agent that that could have legal consequences for you?

2 A. Yes.

3 Q. You knew that you had to tell the truth to that FBI  
4 agent?

5 A. Yes.

6 Q. And before Mari started to interview, she asked you  
7 if you needed an interpreter?

8 A. Yes.

9 Q. And you told her no?

10 A. Yes.

11 Q. You told her that you spoke English so well that you  
12 signed your own business contracts that were written in  
13 English?

14 A. Yes.

15 Q. And you signed some papers with Mari --

16 A. Yes.

17 Q. -- correct?

18 There's a waiver of *Miranda* that you signed with  
19 Mari?

20 A. Yes.

21 Q. That was written in English?

22 A. Yes.

23 Q. And you read that?

24 A. No.

25 Q. Somebody read it to you?

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1 A. I'm -- I think so.

2 Q. You signed your name on a piece of paper regarding  
3 the *Miranda* warnings?

4 A. I don't recall.

5 Q. All right. Let me refresh --

6 A. If you -- I mean, you have the document.

7 Q. I sure do.

8 Mr. Fuechtener, would looking at that piece of  
9 paper help refresh your recollection?

10 A. Yes.

11 MS. ROOHANI: May I approach, Your Honor?

12 THE COURT: Yes, you may.

13 THE WITNESS: Thank you.

14 BY MS. ROOHANI:

15 Q. Take a look at it and then turn it over, okay?

16 Do you recognize that document?

17 A. Yes.

18 Q. What is it?

19 A. That's an advice of rights.

20 Q. *Miranda* warnings?

21 A. Yes.

22 Q. Your signature's on that page?

23 A. Yes.

24 Q. That page is written in English?

25 A. Yes.



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1 Q. You signed that document?

2 A. Yes.

3 Q. After you read it?

4 A. I don't recall reading it.

5 Q. Somebody --

6 A. I signed it.

7 Q. So you sign documents that you don't know what they  
8 mean. That's your testimony?

9 A. I trusted her. I mean --

10 Q. You trusted an FBI agent who was at your house to  
11 investigate you --

12 A. Yes, I did.

13 Q. -- for child pornography?

14 A. Yes, I did.

15 Q. Okay. You didn't ask Mari for a German translator,  
16 did you?

17 MS. CONNOLLY: Objection. Already asked and  
18 answered.

19 THE COURT: I think the question was as to  
20 before he signed.

21 MS. ROOHANI: Yes, Your Honor.

22 THE COURT: Are you talking about at any point  
23 later on --

24 BY MS. ROOHANI:

25 Q. I'm talking about --

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1 THE COURT: -- during the interview.

2 BY MS. ROOHANI:

3 Q. -- when you were signing that *Miranda* form that was  
4 written in English, did you ask Mari for a German  
5 translator?

6 A. No.

7 Q. Did you ask anyone for a German translator that day?

8 A. Yes.

9 Q. Who did you ask for a German translator that day,  
10 Mr. Fuechtener?

11 A. There was a friend at the house, and we had, like, a  
12 brief -- I think he brought it out, and I made a --

13 Q. Who's that friend?

14 A. -- about that.

15 Q. Who was that?

16 A. It was Joel Rosales.

17 Q. Does Joel speak German, Mr. Fuechtener?

18 A. No.

19 Q. How is he going to translate --

20 A. Except for three words.

21 Q. Was he going to translate that *Miranda* form for you  
22 into German?

23 A. No, it wasn't -- we didn't -- it wasn't him who --  
24 we talked about a translator, a professional translator.

25 Q. So it's your testimony that Mari asked you if you

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1 needed a translator; correct?

2 MS. CONNOLLY: Objection. Already asked and  
3 answered.

4 MS. ROOHANI: It's going to impeachment, Your  
5 Honor.

6 THE COURT: Overruled.

7 BY MS. ROOHANI:

8 Q. Mari asked you if you needed a translator; correct?

9 A. Yes.

10 Q. And you had told Mari no?

11 A. Yes.

12 Q. And Mari told you if at any point you need a German  
13 translator, you could ask her, and she would get you a  
14 German translator?

15 A. I don't recall that.

16 Q. She told you that there was a German-speaking  
17 officer who could translate for you?

18 A. Yes.

19 Q. She told you that if at any point you needed  
20 translation, you could ask her, and she would get that  
21 officer for you; correct?

22 A. That I don't recall.

23 Q. And it's your testimony that you did not ask Mari  
24 for a translator but instead you asked Joel, who doesn't  
25 speak German?

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1 A. No.

2 MS. CONNOLLY: Objection. Misstates his  
3 testimony.

4 BY MS. ROOHANI:

5 Q. Now, when Mari --

6 THE COURT: Sorry. The objection is sustained.  
7 It does misstate the testimony.

8 BY MS. ROOHANI:

9 Q. When you were talking to Mari, you were talking to  
10 her in a car; correct?

11 A. Yes.

12 Q. There was another officer there?

13 A. Yes.

14 Q. He was sitting in the front seat?

15 A. If you say so.

16 Q. Was Mari sitting in the back seat?

17 A. I don't recall who was sitting where. I think -- I  
18 think she was sitting in the back seat --

19 Q. Okay.

20 A. -- and he was sitting in the front seat.

21 Q. And Joel wasn't in the car?

22 A. No.

23 Q. And, in fact, other investigators were -- if you  
24 have knowledge of this, if you have knowledge, other  
25 investigators were talking to Joel; correct?

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1 A. Yeah, I saw that later when we came out.

2 Q. And, in fact, you were deliberately separated from  
3 Joel; correct?

4 MS. CONNOLLY: Objection. Calls for speculation.  
5 He wouldn't know why the officers did what they did.

6 THE COURT: Sustained.

7 BY MS. ROOHANI:

8 Q. Were you separated from Joel?

9 A. Yes.

10 Q. And you didn't interact with Joel while the search  
11 warrant was being executed?

12 A. I did interact with him.

13 Q. When Mari --

14 A. While the search warrant was executed.

15 Q. Before you were talking to Mari, you did not talk to  
16 Joel; correct?

17 A. It depends when.

18 Q. When you were talking to Mari --

19 A. We talked all day until noon.

20 Q. You did not talk to Joel during that time; correct?

21 A. I did talk to him.

22 Q. When Mari --

23 A. And to her.

24 Q. I'm being very specific, okay?

25 A. Uh-huh.

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1 Q. When Mari was at your house?

2 A. Yes.

3 Q. Later on you talked to Mari on the phone, and I know  
4 that.

5 A. Uh-huh.

6 Q. We'll talk about that in a minute.

7 When Mari was at your house, you did not talk to  
8 Joel; correct?

9 A. No.

10 Q. Okay. You did not talk to Joel?

11 A. No. I talked to Joel when Mari was at the house.  
12 Sorry.

13 Q. Okay. Not a problem.

14 Mari also talked to you about a consent form --  
15 do you remember that -- to take over your lars45 account?

16 A. Yeah, that was later the day.

17 Q. All right.

18 A. Uh-huh.

19 Q. You talked to Mari about that?

20 A. Yes.

21 Q. Your conversation with her was in English?

22 A. Yes.

23 Q. And that form was written in English?

24 A. Yes.

25 Q. It's a legal form?

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1 A. I don't know.

2 Q. Standard FBI form?

3 MS. CONNOLLY: Objection. Asked and answered.

4 He didn't know.

5 THE WITNESS: At that point I didn't -- I  
6 didn't -- I didn't pay attention on that -- to that.

7 BY MS. ROOHANI:

8 Q. Okay. Did you read the form?

9 A. No.

10 Q. You did not read the form?

11 A. No.

12 MS. CONNOLLY: Objection. Asked and answered.

13 BY MS. ROOHANI:

14 Q. Your testimony that you did not read the form --

15 MS. CONNOLLY: Objection. Asked and answered  
16 three times.

17 THE COURT: Sustained.

18 MS. ROOHANI: Okay.

19 BY MS. ROOHANI:

20 Q. Mr. Fuechtener, if I showed you a form had your  
21 signature on it, would that help refresh your recollection?

22 MS. CONNOLLY: Actually --

23 THE WITNESS: I know --

24 MS. CONNOLLY: -- he didn't say --

25 THE WITNESS: -- the form.

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1 BY MS. ROOHANI:

2 Q. You do know the form?

3 A. Yeah.

4 Q. In fact, you are aware of the form that I'm talking  
5 about?

6 A. Yes.

7 Q. It's your testimony that you did not read that form?

8 A. At that time I didn't.

9 Q. So you didn't tell Mari --

10 A. He told me what to do and where to fill things, and  
11 then we -- it was like -- for me it was like -- like a note  
12 you print over the computer where you leave things free  
13 and --

14 Q. It was a print --

15 A. I mean, I know what it was about, what she wanted,  
16 let's put it like that.

17 Q. Okay. You understood what she wanted. You  
18 understood what the form was about; fair?

19 A. Yes.

20 Q. You understood that the form was wanting to take  
21 over the lars45 GigaTribe account?

22 A. Yeah. That -- I didn't understand it like that.

23 Q. Did you sign that document, Mr. Fuechtener?

24 A. I don't recall, but I think you have it in your  
25 hands, so let's take a look.



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1 Q. Did you write on that form, Mr. Fuechtener?

2 A. I wrote something on that form, yes.

3 Q. If I showed you that form, would it help you refresh  
4 your recollection about the form?

5 A. I know what it looks like.

6 Q. You know what it looks like?

7 A. Yeah.

8 Q. You wrote on it --

9 A. I saw it in court.

10 Q. You saw it in court?

11 A. Uh-huh.

12 Q. And it was about the takeover of the lars45  
13 GigaTribe account?

14 A. Yes.

15 Q. These are not trick questions. Okay.

16 A. I have to be careful.

17 MS. CONNOLLY: Objection.

18 BY MS. ROOHANI:

19 Q. Mr. Fuechtener, you asked Special Agent Panovich if  
20 you could write something on that form.

21 Do you remember that?

22 A. No.

23 Q. You don't remember that?

24 A. No.

25 Q. You don't remember saying, "Can I write on here

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1     that" --

2                   MS. CONNOLLY:  Objection.

3     BY MS. ROOHANI:

4         Q.        -- "I'm not into that"?

5                   MS. CONNOLLY:  Objection.  Asked and answered  
6     twice.  She's on her third time.

7                   THE COURT:  Overruled.

8                   THE WITNESS:  No, that's not what I asked.

9     BY MS. ROOHANI:

10        Q.        Okay.  What did you tell her you wanted to write on  
11     there?

12        A.        Well, it has been a while, and I wanted to add to  
13     that form that I didn't share or download child pornography  
14     with that account and --

15        Q.        That's what you wanted to write on the form?

16        A.        That's what I wanted to write on that form --

17                   MS. CONNOLLY:  And she's cutting him off without  
18     letting him answer the question.

19                   MS. ROOHANI:  He already answered the question.

20                   THE COURT:  Sustained.

21     BY MS. ROOHANI:

22        Q.        Go ahead and finish answering.

23        A.        I wanted to write that down.  And then Ms. Panovich  
24     and Mr. -- the police officer, Mr. Vicente Ramirez, they  
25     had a short talk in the car if they could do that.

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1                   And then he said, "Well, we can't do that. We  
2                   can't have him sign that." And then they ripped it apart.  
3                   And for me, the form was gone.

4           Q.       So you understood that if you did not agree with  
5                   something on that form, you didn't have to sign it?

6           A.       It -- it -- it didn't come to my mind that this is  
7                   something I would need to sign. At -- at that moment there  
8                   wasn't an official form for me. It was a question for me  
9                   to write certain things down.

10                   And I wanted to add something, and that couldn't  
11                   be done, and then they dismissed the whole form idea.

12          Q.       Okay. That's what I'm asking you.

13                   You wanted to add something to the form;  
14                   correct?

15          A.       Yeah.

16          Q.       They told you it couldn't be done; correct?

17          A.       They told them amongst themselves. And then they  
18                   ripped it apart. And then --

19          Q.       And you didn't sign the form; correct?

20          A.       No.

21          Q.       Okay. So you understood that if you didn't like a  
22                   term in a legal document, you could add it --

23                   MS. CONNOLLY: Objection.

24                   BY MS. ROOHANI:

25          Q.       -- correct?

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1 MS. CONNOLLY: Assumes facts not in evidence it  
2 was a legal document.

3 Oh, I'm sorry.

4 THE COURT: What is the question -- what is the  
5 objection? That the form is not in evidence?

6 MS. CONNOLLY: Yeah, I don't even know what  
7 doc- -- she's talking about a document, reference it being  
8 a legal document. We don't have the document. It's not in  
9 evidence.

10 She's asked him about something he signed years  
11 ago asking him if it's a legal document. Assumes facts not  
12 in evidence.

13 MS. ROOHANI: I'm happy to admit the document,  
14 Your Honor.

15 THE COURT: All right. Go ahead.

16 MS. ROOHANI: May I approach, Your Honor?

17 THE COURT: Yes, you may.

18 THE WITNESS: Thank you.

19 COURTROOM ADMINISTRATOR: Your Honor, for the  
20 record, this exhibit is being marked as Exhibit 1.

21 THE COURT: All right. Exhibit --

22 BY MS. ROOHANI:

23 Q. Mr. Fuechtener, do you recognize that document?

24 A. Yes.

25 Q. What is it?

—TRANSCRIBED FROM DIGITAL RECORDING—

1       A.       It's a ripped apart form which is put together  
2       and -- which was showed to me in that car.

3       Q.       Is it a fair and accurate depiction of the form that  
4       you looked at in the car?

5       A.       Well, the one in the car was like a complete one,  
6       and this is the one which they ripped at the end and all  
7       put together and photocopied, yeah.

8       Q.       Fair to say --

9       A.       It's how it looks like.

10      Q.       -- it looks like it was copied when it was put back  
11      together? Fair?

12      A.       Say that again.

13      Q.       It looks like there's a tear if you look down?

14      A.       Yes.

15               MS. ROOHANI: Your Honor, I would move to admit  
16      Government's Exhibit 1.

17               THE COURT: Any objection to Exhibit 1?

18               MS. CONNOLLY: Just to relevance.

19               THE COURT: So Exhibit 1 will be admitted.

20               MS. ROOHANI: Thank you, Your Honor.

21               (Exhibit No. 1 received.)

22      BY MS. ROOHANI:

23      Q.       All right. Mr. Fuechtener, this is the document  
24      that you wanted to add something to; correct?

25      A.       Yes.

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1 Q. And Special Agent Panovich and Mr. Ramirez had a  
2 conversation and said that you couldn't add something to  
3 it; correct?

4 A. Yes.

5 Q. And you did not sign this document; correct?

6 A. No.

7 Q. And the reason you didn't sign this document is  
8 because you wanted to add something to it; correct?

9 A. Yeah, that was one of the reasons.

10 Q. All right. So you knew that if there was a term  
11 that you didn't like, you shouldn't sign a document;  
12 correct?

13 A. That wasn't a document for me. At that moment I  
14 didn't see it as a legal document.

15 Q. It is a document, correct, Mr. Fuechtener?

16 A. If you -- yeah. I mean, for me it wasn't a legal  
17 document at that time.

18 Q. At the time of it, it says "Federal Bureau of  
19 Investigation"?

20 A. I didn't read that.

21 MS. CONNOLLY: I'm going to object to the  
22 reference of it being a legal document, also.

23 The document was generated by the FBI. That  
24 doesn't necessarily make it a legal document. So object  
25 to --

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1 THE COURT: It depends on --

2 MS. CONNOLLY: -- characterization.

3 THE COURT: -- how you're defining a legal  
4 document. Did you mean this is just the standard FBI form?

5 MS. ROOHANI: Maybe I can clarify, Your Honor.

6 THE COURT: All right.

7 BY MS. ROOHANI:

8 Q. You understood that you would be giving up certain  
9 rights by signing this document, correct, Mr. Fuechtener?

10 A. No.

11 Q. So consent to assume online identity authorization  
12 form didn't tell you you were giving up certain rights?

13 A. I didn't read that.

14 Q. All right. Did Special Agent Panovich tell you that  
15 you would be giving up your right to the lars45 --

16 MS. CONNOLLY: Object --

17 BY MS. ROOHANI:

18 Q. -- account?

19 MS. CONNOLLY: Objection. Hearsay as to what  
20 Special Agent Panovich did or did not say.

21 MS. ROOHANI: It's going to his state of mind,  
22 Your Honor. It's not offered for its truth.

23 THE COURT: Overruled. He may answer the  
24 question.

25 THE WITNESS: I don't recall.

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1 BY MS. ROOHANI:

2 Q. You didn't sign this document?

3 A. No.

4 Q. You wanted to add something to this document?

5 A. Yes.

6 Q. And you didn't sign it because you wanted to add  
7 something to it?

8 MS. CONNOLLY: Objection. Misstates his  
9 testimony.

10 THE COURT: He can answer the question.

11 THE WITNESS: Well, I was in a hurry. I mean,  
12 the whole context should be -- I think it's important to  
13 have the context of that whole situation.

14 BY MS. ROOHANI:

15 Q. You didn't ask for a German translator when you were  
16 talking about this document with Special Agent Panovich,  
17 did you?

18 A. No. I had a show in an hour after that.

19 Q. That wasn't the question.

20 A. I know.

21 Q. All right.

22 You agreed to submit to a polygraph in this  
23 case, Mr. Fuechtener; correct?

24 A. Yes.

25 Q. And in conjunction with that, you interviewed with



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1 Special Agent Gary McCamey?

2 A. Yes.

3 Q. You remember that?

4 A. Yes.

5 Q. And you knew that your truthfulness was being  
6 measured in that interview?

7 A. Yes.

8 MS. CONNOLLY: Objection. Relevance.

9 THE COURT: I'm assuming there's some document?

10 MS. ROOHANI: Yes, Your Honor.

11 THE COURT: All right. Objection overruled.

12 BY MS. ROOHANI:

13 Q. And you signed some papers with Special Agent  
14 McCamey; correct?

15 A. It was on a tablet, yeah.

16 Q. You signed --

17 A. I think.

18 Q. -- a document on a tablet?

19 A. Yes.

20 Q. It was a waiver form; correct?

21 A. I just signed it. I didn't read it. I just signed  
22 it.

23 Q. And it's your testimony that you're in the business  
24 of signing documents you haven't read, Mr. Fuechtener;  
25 correct?

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1 MS. CONNOLLY: Judge, misstates what he just  
2 said.

3 THE COURT: He can answer the question.

4 THE WITNESS: Well, I trusted that person. He  
5 said this needs to be signed, that we can proceed, and at  
6 that -- I signed two things, and at that point I didn't  
7 understand the difference, I just signed it.

8 Yes, I just signed it without reading it.

9 BY MS. ROOHANI:

10 Q. It's your testimony that you trusted people that you  
11 had just met that day, Mr. Fuechtener?

12 A. Well, he wasn't -- I mean, he wasn't --

13 Q. Did you just meet them that day, Mr. Fuechtener?

14 A. Yes.

15 Q. It's your testimony that you trusted them?

16 A. Yes.

17 Q. And that's why you signed those document?

18 A. Yes.

19 Q. And you signed them despite the fact that you had  
20 just met them that day?

21 A. Yes.

22 MS. CONNOLLY: Objection. Asked and answered.

23 BY MS. ROOHANI:

24 Q. You did not ask Special Agent McCamey for a German  
25 translator?

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1 A. No.

2 Q. All right. Jan, how many attorneys have worked on  
3 this case for you?

4 A. Five.

5 Q. Tell me who they are.

6 A. Five.

7 Q. Five? Who?

8 A. Mr. Jess Marchese, Mr. Ben Nadig, Mr. Michael Sanft,  
9 and Mr. Durham, and Ms. Amber Craig.

10 Q. Ms. Connolly has never worked on this case for you?

11 A. Oh, yeah, of course.

12 MS. CONNOLLY: I didn't hear your question. I'm  
13 sorry.

14 BY MS. ROOHANI:

15 Q. Ms. Connolly has never worked on this case for you?

16 A. Yeah, she -- she would be the sixth.

17 Q. Mr. Pacitti never worked on this case for you?

18 A. He always was -- oh, I mean, I didn't -- I thought  
19 you meant the -- yeah, you can add him to the list, I  
20 guess.

21 Q. You testified on direct that four other attorneys  
22 also consulted with you on this case; correct?

23 A. Yeah.

24 Q. Okay. That was about the motion to withdraw the  
25 plea?

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1 A. Uh-huh.

2 Q. And you told them what you wanted to do?

3 A. Yes.

4 Q. You offered to pay them?

5 A. Yes.

6 Q. They didn't want to work for free?

7 A. Uh-huh.

8 Q. And they declined to take the case?

9 MS. CONNOLLY: Objection. Misstates his  
10 testimony. And it's irrelevant.

11 THE COURT: He can answer the question.

12 THE WITNESS: No, they didn't decline.

13 BY MS. ROOHANI:

14 Q. They're not representing you here today, are they?

15 A. No.

16 Q. Did you decide to not go with them?

17 A. It was with some of them --

18 MS. CONNOLLY: Objection. I think it's getting  
19 into attorney-client --

20 THE WITNESS: I decided --

21 MS. CONNOLLY: -- information. Why he did or  
22 did not hire a prior -- a specific attorney has nothing to  
23 do with --

24 MS. ROOHANI: Your Honor, Ms. Connolly went into  
25 it on direct, and I would ask that Your Honor deem that the

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1 privilege is waived.

2 I'm not getting into the substance of the  
3 conversations regarding what their advice was, but just if  
4 they agreed to represent him or not. Which I don't --

5 MS. CONNOLLY: I think that -- it is  
6 attorney-client privilege if they agreed to represent him  
7 or not.

8 THE COURT: All right. Overruled. I think she  
9 can ask the question whether or not they --

10 BY MS. ROOHANI:

11 Q. Did they decline to take your case?

12 A. One did.

13 Q. So three others agreed to take your case?

14 A. Yes.

15 Q. But they're not here today?

16 A. No.

17 Q. You talked a little bit -- your attorney asked some  
18 questions of the other attorneys about how much they got  
19 paid. So I'd like to ask you some questions about that,  
20 okay?

21 A. Yes.

22 Q. How much did you pay Ben Nadig?

23 A. Jess Marchese paid him.

24 Q. Jess paid Ben Nadig?

25 A. No, Ben Nadig -- Frank helped to pay Ben Nadig.

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1 Q. Your husband paid Ben Nadig?

2 A. Yes.

3 Q. Because Mr. Nadig represented your husband?

4 A. No.

5 Q. How much did he get paid?

6 A. Huh?

7 Q. How much did he get paid?

8 A. \$100,000, from what I heard. I never saw any proof  
9 of that, but --

10 Q. How much did you pay Mr. Pacitti? For this case?

11 A. For this case, I don't know.

12 Q. You didn't --

13 A. Frank Alfter dealt with that because I was  
14 incarcerated.

15 Q. Mr. Pacitti didn't actually get paid for this case,  
16 did he?

17 A. I don't know.

18 MS. CONNOLLY: Objection. He indicated he  
19 didn't know, Mr. Alfter dealt with that.

20 BY MS. ROOHANI:

21 Q. Mr. Marchese, how much did he get paid?

22 THE COURT: Maybe you could change the form of  
23 the question to how much you believe they got paid.

24 MS. ROOHANI: Sure.

25

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1 BY MS. ROOHANI:

2 Q. How much --

3 THE COURT: Because he's saying that he didn't  
4 make the payment. I think that's why it might be  
5 getting --

6 MS. ROOHANI: Sure.

7 BY MS. ROOHANI:

8 Q. How much do you --

9 A. I believe 85,000.

10 Q. How much do you believe Mr. Sanft got paid?

11 A. 100,000.

12 Q. How much do you believe Mr. Durham got paid?

13 A. Fifty thousand.

14 Q. How much do you believe Ms. Craig got paid?

15 A. Twenty-five thousand.

16 Q. And how much did Ms. Connolly get paid --

17 MS. CONNOLLY: Objection.

18 BY MS. ROOHANI:

19 Q. -- to file this motion for you?

20 MS. CONNOLLY: Objection. Relevance.

21 What I'm getting paid has got nothing to do with  
22 what happened to withdrawing the plea. It's irrelevant.

23 THE COURT: Sustained.

24 BY MS. ROOHANI:

25 Q. You've had multiple conversations with these

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1 attorneys; is that correct?

2 MS. CONNOLLY: Objection to them all -- they.

3 MS. ROOHANI: I didn't --

4 MS. CONNOLLY: It could be -- the question --  
5 it's an improper question if she's referring to all  
6 attorneys. Maybe he had lots of conversations with some  
7 and none with others.

8 BY MS. ROOHANI:

9 Q. Have you had a conversation with all of these  
10 attorneys, Mr. Fuechtener?

11 A. Yes.

12 Q. Have you had multiple conversations with some of  
13 them?

14 A. Yes.

15 Q. And in your conversations with these attorneys, did  
16 you ever ask for a translator?

17 A. No.

18 Q. Did you ever hire a translator yourself?

19 A. Not for this case.

20 Q. And you met with some of these attorneys for just a  
21 few minutes sometimes; right?

22 A. Yeah. Yes.

23 Q. And you met with them, with some of the attorneys,  
24 for a couple hours at times?

25 A. Yes.



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1 Q. And you covered lots of different topics with them?

2 A. Yes.

3 Q. You went over different defenses that you would come  
4 up with; right?

5 A. Yes.

6 Q. You talked to them about complicated computer  
7 issues?

8 A. No.

9 Q. You never talked to them about potential hackers?

10 A. No.

11 Q. You never talked to them --

12 MS. CONNOLLY: Objection --

13 BY MS. ROOHANI:

14 Q. -- about pirated signals?

15 MS. CONNOLLY: -- to relevance.

16 MS. ROOHANI: Ms. Connolly made it relevant when  
17 she admitted Mr. Nadig's e-mail, Your Honor.

18 THE COURT: All right. Overruled.

19 BY MS. ROOHANI:

20 Q. You never talked to them about computer issues?

21 A. There was a computer expert.

22 Q. You never talked to your attorneys ever about any  
23 computer --

24 A. I did. I talked to them.

25 Q. You did. Okay.

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1 A. Yeah.

2 Q. You talked to them about hackers?

3 A. I don't recall.

4 Q. You talked to them about pirated signals?

5 A. I don't remember that that was ever a topic.

6 Q. Mr. Fuechtener, do you remember when you testified  
7 on direct that you read that e-mail from Mr. Nadig?

8 A. Yes.

9 Q. And in that e-mail it talked about pirated signals.  
10 Do you remember that?

11 A. Yes.

12 Q. So your testimony now is you've never talked to  
13 anybody about pirated signals?

14 A. When I read that --

15 Q. That's not the question --

16 A. -- I read it the first time --

17 Q. No, no, no, no, no. Hold up.

18 A. -- no, I didn't --

19 Q. Hold up.

20 A. -- talk to anybody.

21 MS. CONNOLLY: Objection to her not letting him  
22 finish.

23 MS. ROOHANI: That's not the question. You're  
24 not answering the question.

25 THE COURT: He was answering the question. Let

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1 him finish the question.

2 MS. ROOHANI: Okay.

3 THE WITNESS: When I read that in that e-mail, I  
4 read the first time about pirated signals. I don't recall  
5 having heard that before.

6 BY MS. ROOHANI:

7 Q. Okay. Mr. Nadig came out to talk to you. That's  
8 what you testified about on direct.

9 A. Yes.

10 Q. He talked to you about the defenses; correct?

11 A. No.

12 Q. You didn't testify on direct that he talked to you  
13 about potential defenses?

14 A. He talked about potential but not what they were.

15 Q. You didn't testify on direct that he talked to you  
16 about that e-mail?

17 MS. CONNOLLY: Objection. That misstates what  
18 he --

19 THE WITNESS: He talked to me about that e-mail.

20 BY MS. ROOHANI:

21 Q. Okay. And in that e-mail it talks about pirated  
22 signals --

23 A. Yes.

24 Q. -- correct?

25 Okay. When you talked to Mr. Nadig about the

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1 e-mail and about the pirated signals, you were speaking to  
2 him in English; correct?

3 A. Yes.

4 Q. All right. And you never asked him for a  
5 translator; correct?

6 A. No.

7 Q. You never asked any of your attorneys for a  
8 translator; correct?

9 A. Yes.

10 Q. You did ask them or you did not ask --

11 A. No, they -- when there was a problem, they explained  
12 things.

13 Q. You didn't ask them for a translation --

14 A. No.

15 Q. -- in German? All right.

16 And you didn't have a translator with you  
17 through these proceedings either?

18 A. No.

19 Q. Talk about firing your attorneys.

20 You knew that you could fire your attorneys for  
21 any reason; right?

22 A. Yes.

23 Q. That's why you fired Mike Sanft? You knew you could  
24 fire Mike Sanft?

25 A. My -- at that time -- I didn't fire him. I took him

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1 off the case and then put him back on; so he technically  
2 was not fired. But if -- I mean, I didn't see it that way  
3 when I took him off the case.

4 Q. Explain to me what taking somebody off a case means  
5 to you.

6 A. It means that his name disappears in the initial  
7 court papers. You -- he's no longer the official -- one of  
8 the official lawyers who can come in here and be here when  
9 we talk about the case.

10 Q. Okay. You testified on direct that you fired  
11 Mr. Sanft because you felt like he wasn't doing anything;  
12 is that right?

13 A. Yes.

14 Q. Okay. And you testified on direct that you thought  
15 you would get your money back from him; is that right?

16 A. Well, if I testified that, then I testified that.

17 Q. So it's still your testimony that Mr. Sanft was  
18 being -- working on your case, even though you were trying  
19 to get money back from him?

20 MS. CONNOLLY: Objection. Misstates his  
21 testimony.

22 THE COURT: Sustained.

23 BY MS. ROOHANI:

24 Q. You fired Mr. Sanft, didn't you?

25 A. How do you mean that? What --

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1 Q. You're the one who took him off the case?

2 A. Yes.

3 Q. Jess is not the person who took him off the case?

4 A. Huh?

5 Q. Jess didn't take him off the case; right?

6 A. He strongly suggested that.

7 Q. No, no, no. Stop. Hearsay.

8 MS. CONNOLLY: Objection. She asked the  
9 question. She needs to let him answer. She asked him what  
10 Jess did or didn't do. He needs to be allowed to answer  
11 that.

12 MS. ROOHANI: I didn't --

13 THE COURT: Sustained.

14 MS. CONNOLLY: Opened the door.

15 THE COURT: He can answer the question.

16 BY MS. ROOHANI:

17 Q. Go ahead.

18 A. Yeah. There was a meeting in Henderson in a meeting  
19 room, and there was Mr. Marchese, Mr. Durham, and myself,  
20 and they brought a paper. And me and Mr. Marchese decided  
21 together, at that point, that it would be the best to --  
22 for the further proceedings, to replace Mr. Sanft with  
23 Mr. Durham.

24 Q. Did Mr. Sanft represent Mr. Marchese?

25 A. Did Mr. Sanft represent Mr. Marchese?

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1 Q. Correct.

2 A. No.

3 Q. Mr. Sanft represented you?

4 A. Yes.

5 Q. You're the person who decided to take Mike off the  
6 case?

7 MS. CONNOLLY: Objection. He already answered  
8 that him and Mr. Marchese decided it was best to substitute  
9 Mr. Durham.

10 MS. ROOHANI: That wasn't the question, Your  
11 Honor.

12 MS. CONNOLLY: He just testified to that. She's  
13 misstating his testimony.

14 THE COURT: Sustained. I think we --  
15 BY MS. ROOHANI:

16 Q. I believe you testified on direct that you were the  
17 person calling the shots; correct?

18 MS. CONNOLLY: Objection. Misstates his  
19 testimony.

20 THE WITNESS: Calling the shots? I don't recall  
21 that.

22 BY MS. ROOHANI:

23 Q. Making the decisions about the case?

24 A. With my lawyers.

25 Q. You testified on direct that it was your decision to

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1 bring Amber Craig --

2 MS. CONNOLLY: Objection.

3 BY MS. ROOHANI:

4 Q. -- on to the case?

5 MS. CONNOLLY: Asked and answered.

6 MS. ROOHANI: I'm not -- Your Honor --

7 THE COURT: Overruled. She can ask her  
8 question.

9 MS. ROOHANI: -- if Ms. Connolly could let me  
10 finish my question.

11 THE COURT: Go ahead and ask your question.

12 BY MS. ROOHANI:

13 Q. You testified on direct that it was your decision to  
14 bring Amber Craig on the case; correct?

15 A. Yes.

16 Q. You wanted a female attorney?

17 A. Yes.

18 Q. That was your idea?

19 A. No.

20 Q. You testified on direct that that was --

21 A. It was our idea. I mean --

22 Q. You talked to Jess about it?

23 A. Yes. He found her. I mean --

24 Q. You wanted the female attorney; correct?

25 A. Yes.



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1 Q. You made the decision to bring on Ms. Craig?

2 MS. CONNOLLY: Objection. Asked and answered  
3 three times.

4 THE COURT: Overruled. He can answer the  
5 question.

6 THE WITNESS: Yeah, I made the final decision,  
7 yes.

8 BY MS. ROOHANI:

9 Q. The same way that you made the decision to take  
10 Mr. Sanft off the case?

11 MS. CONNOLLY: Objection. Asked and answered.  
12 He and Marchese.

13 THE WITNESS: Yeah, we together -- I trusted --  
14 at that point, I trusted -- I mean, I sometimes did what my  
15 lawyer said because I trusted him.

16 And then I, of course, took the decision. But  
17 that's -- that's how it is in these proceedings.

18 BY MS. ROOHANI:

19 Q. Okay. After the complaint was filed in this case,  
20 Jan, you met with pretrial services.

21 Do you remember that?

22 A. Yes.

23 Q. You interviewed with them?

24 A. Yes.

25 Q. And that was on March 15th, 2016? Correct? That

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1 was the date you were arrested?

2 A. Yes -- if -- yes.

3 Q. Okay. You didn't ask them for a German translator,  
4 did you?

5 A. No.

6 Q. And you made your initial appearance in front of  
7 Judge Leen.

8 Do you remember that?

9 A. Yes.

10 Q. And Judge Leen asked you if you needed an  
11 interpreter?

12 A. I don't remember that.

13 Q. And you said "No"?

14 A. But you probably do. So if she said that --

15 Q. She asked you if you needed --

16 A. -- and I said "No," then --

17 Q. -- and you said "No."

18 A. -- that's true.

19 Q. Okay. She asked you if you had read the charges in  
20 the complaint?

21 A. Yes.

22 Q. And you said "Yes"?

23 A. Yes.

24 Q. She asked you if you knew what you were charged with  
25 in the complaint?

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- 1       A.       Yes.
- 2       Q.       And you said "Yes"?
- 3       A.       Yes.
- 4       Q.       Didn't ask for a translator; correct?
- 5       A.       No.
- 6       Q.       Then you had an arraignment and plea in front of
- 7       Judge Hoffman?
- 8       A.       Yes.
- 9       Q.       Do you remember that?
- 10      A.       Yes.
- 11      Q.       That was on April 6, 2016?
- 12      A.       Yes.
- 13      Q.       And Judge Hoffman asked you if you needed an
- 14      interpreter?
- 15      A.       Yes.
- 16      Q.       And you said "No"?
- 17      A.       No.   Yes.
- 18      Q.       You said "No"?
- 19      A.       Yes.
- 20      Q.       All right.   And he asked you if you read the charges
- 21      in the indictment?
- 22      A.       Yes.
- 23      Q.       And you said "Yes"?
- 24      A.       Yes.
- 25      Q.       He asked you if you understood what you were charged

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1 with in the indictment?

2 A. Yes.

3 Q. And you said "Yes"?

4 A. Yes.

5 Q. And you would agree with me that those -- the  
6 complaint and the indictment are legal documents?

7 A. Yes.

8 Q. You had a waiver of jury trial in front of Judge  
9 Navarro.

10 Do you remember that?

11 A. Yes.

12 Q. That was on -- first on October 6. Let's talk about  
13 that date first, okay?

14 A. Yes.

15 Q. Judge Navarro asked you if you needed an  
16 interpreter?

17 A. Yes.

18 Q. And you said "No"?

19 A. Yes.

20 Q. And then Judge Navarro asked you some questions  
21 about your mental health.

22 Do you remember that?

23 A. Yes.

24 Q. And she asked you some questions about your  
25 education?

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- 1       A.       Yes.
- 2       Q.       And at some point you had some questions?
- 3       A.       Yes.
- 4       Q.       And Judge Navarro gave you more time to think about  
5       it?
- 6       A.       Yes.
- 7       Q.       And you told her, "I don't need more time."  
8               Do you remember that?
- 9       A.       Yes.
- 10      Q.       But she insisted?
- 11      A.       Yes.
- 12      Q.       And during that time, you didn't ask for a German  
13      interpreter?
- 14      A.       No.
- 15      Q.       Then you came back on October 11th.  
16               Do you remember that?
- 17      A.       Yes.
- 18      Q.       Again, Judge Navarro asked you if you needed an  
19      interpreter?
- 20      A.       Yes.
- 21      Q.       You said "No"?
- 22      A.       Yes.
- 23      Q.       And that time you waived your right to a jury trial?
- 24      A.       Yes.
- 25      Q.       You did not ask for a German interpreter then

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1 either?

2 A. No.

3 Q. And you sat through trial. You sat through the  
4 trial?

5 A. Yes.

6 Q. Okay. Fair to say you didn't have an interpreter  
7 there either?

8 A. No.

9 Q. And you had paid your --

10 A. Yes. No interpreter.

11 Q. No interpreter. Okay.

12 And that's because you didn't want one?

13 A. I thought I didn't need one.

14 Q. You didn't need an interpreter?

15 A. I thought at that point I didn't need one.

16 Q. All right. You actively participated in your trial?

17 A. Yes.

18 Q. You were talking to your attorneys?

19 A. Yes.

20 Q. In English?

21 A. Yes.

22 Q. About legal concepts?

23 A. Yes.

24 Q. And you never asked for an interpreter?

25 A. No.

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1 Q. And at this hearing you've been involved; fair to  
2 say?

3 A. Yes.

4 Q. You've been chatting with Ms. Connolly at the table?

5 A. Yes.

6 Q. About legal concepts?

7 A. Yes.

8 Q. And you've been able to communicate with her without  
9 a translator?

10 A. Yes.

11 Q. Didn't ask for an interpreter?

12 A. No.

13 Q. Talked about the plea agreement?

14 Mr. Durham read it to you; correct?

15 A. No.

16 Q. Mr. Durham -- I just want to be clear. It's your  
17 testimony Mr. Durham did not read your plea agreement to  
18 you; correct?

19 A. He did not read it to me.

20 Q. Okay. You testified under oath on direct that  
21 Mr. Durham, quote, explained the whole plea agreement to  
22 you line by line; correct?

23 A. He didn't explain it line by line.

24 Q. So you didn't testify on direct that he explained  
25 it to you line by --

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1 A. I didn't know the right words.

2 Ms. Connolly said "paraphrased," and that was a  
3 good word.

4 Q. Okay. He paraphrased it to you line by line. I  
5 believe that was your testimony on direct.

6 A. I could explain you what he exactly did.

7 Q. Just answer my question, okay.

8 You would agree with me that there's some pages  
9 in your plea agreement that talk about sentencing  
10 guidelines; right?

11 A. Yes.

12 Q. That's pages 7 and 8?

13 A. Yes.

14 Q. And you would agree with me that your plea agreement  
15 includes a page about what we were going to ask Judge  
16 Navarro to do in terms of your sentence; correct?

17 A. Ask that again.

18 Q. Is there also a page in the plea agreement that  
19 talks about what the parties are going to request in terms  
20 of your sentence?

21 Do you remember that?

22 A. No.

23 Q. Would it help for you to look at the plea agreement?

24 A. Yes.

25 Q. Okay. Go ahead and look at that plea agreement on



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1 page 10. I believe it says "Positions Regarding Sentence."

2 A. Which exhibit is this?

3 Okay. I got it.

4 Q. All right. Let's go to page 10, please.

5 A. Okay.

6 Q. Does that help you remember?

7 A. Yes.

8 Q. All right. There's a page in the plea agreement  
9 that talks about positions regarding sentence?

10 A. Yes.

11 Q. And it says in there that the parties agree that  
12 Count 1 is going to run consecutive to 2 and 3, which will  
13 run concurrent to each other; correct?

14 A. Yes.

15 Q. And Mr. Durham explained to you the difference  
16 between consecutive and concurrent?

17 A. I don't recall that.

18 Q. When he paraphrased the entire plea agreement to you  
19 line by line, he explained to you the difference between --

20 MS. CONNOLLY: Objection.

21 BY MS. ROOHANI:

22 Q. -- consecutive and concurrent?

23 MS. CONNOLLY: Misstates the testimony. He  
24 didn't say he paraphrased it line by line. And  
25 paraphrasing doesn't mean line by line.

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1 MS. ROOHANI: He agreed with me that that was  
2 his --

3 MS. CONNOLLY: Compound.

4 MS. ROOHANI: -- testimony on direct, Your  
5 Honor.

6 THE COURT: That's not my recollection.

7 BY MS. ROOHANI:

8 Q. Do you remember Ms. Connolly asked you some  
9 questions about the plea colloquy?

10 A. Yes.

11 Q. Judge Navarro asked you if you understood the plea  
12 agreement.

13 Do you remember that?

14 A. Yes.

15 Q. And you said "Yes"?

16 A. Yes.

17 Q. And that's because Mr. Durham explained the plea  
18 agreement to you; correct?

19 A. No.

20 Q. Mr. Durham took the time to go through each section  
21 with you; correct?

22 A. Yes.

23 Q. That includes the section on positions regarding  
24 sentence?

25 A. Yes.

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1 Q. That includes the section on the sentencing  
2 guidelines?

3 A. Yes.

4 Q. So he went through it with you?

5 A. Yes.

6 Q. And that's why when Judge Navarro asked you if you  
7 had enough time to talk to your attorneys about the plea  
8 agreement, you said "Yes"?

9 A. Yes.

10 Q. And then Mr. Durham explained to you the facts;  
11 correct?

12 A. When?

13 Q. When he was going over the plea agreement with you.

14 A. Some of the facts, yeah.

15 Q. Your testimony he only went over some of the facts  
16 with you?

17 A. Yes.

18 Q. He didn't go over all of them with you?

19 A. I mean, it's 17 pages, and we went over it in a  
20 pretty short time. He went through every -- he said  
21 something to every point, let's put it like that.

22 Q. Because he went over every section with you?

23 A. Yes.

24 Q. And he went over the facts with you?

25 A. Yes.

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1 Q. And he explained the facts to you?

2 A. Some facts he explained.

3 Q. Okay. You asked him to take out some of the facts;  
4 correct?

5 A. Yes.

6 Q. All right. And then came and asked me and  
7 Ms. Cartier-Giroux if we'd take out those facts?

8 A. I think it was Mr. Marchese and Mr. Sanft first who  
9 were down, but I might remember wrong.

10 Q. And then told you that the government said no.

11 A. Yes.

12 Q. And he explained to you why the government wouldn't  
13 take it out?

14 A. No.

15 Q. He did not explain to you that it related according  
16 to the specific offense characteristics?

17 MS. CONNOLLY: Objection. Asked and answered.

18 THE WITNESS: No, he did not. He said -- or he  
19 told me that he doesn't know -- he said the chats are not  
20 criminal. He said, "The Grindr chats are not criminal, I  
21 don't know why the government put that in. Don't worry  
22 about that."

23 I wanted to have them out because they were my  
24 chats.

25

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1 BY MS. ROOHANI:

2 Q. Mr. Fuechtener, you were sitting in this courtroom  
3 when Mr. Durham testified; correct?

4 A. Yes.

5 Q. And you heard him testify that he told you about  
6 this; correct?

7 A. Yes.

8 Q. And it's still your testimony that he never talked  
9 to you about specific offense characteristics; correct?

10 MS. CONNOLLY: Objection. It misstates his --

11 THE WITNESS: I didn't know --

12 MS. CONNOLLY: -- testimony.

13 THE WITNESS: -- that this was an offense -- is  
14 deemed as an offense characteristic. For me that was like  
15 one of the facts which I didn't agree with.

16 BY MS. ROOHANI:

17 Q. It's your testimony that Mr. Durham went over the  
18 positions regarding sentence with you; correct?

19 A. Yes.

20 Q. It's your testimony that he went over the section  
21 that talks about guidelines; correct?

22 A. Yes.

23 Q. And in that section it says "Specific Offense  
24 Characteristics"; correct?

25 A. Yes.

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1 Q. It's still your testimony that he never talked to  
2 you about that?

3 A. He --

4 Q. Yes or no?

5 A. What you understand what is talking about? What  
6 does that mean?

7 Q. I believe your testimony was that he explained each  
8 section to you; correct?

9 MS. CONNOLLY: Objection. She's misstating. He  
10 said a number of times that he's paraphrased it, and she's  
11 taken what he says and saying that he says something else,  
12 continually misstating what he testified to.

13 THE COURT: Sustained.

14 BY MS. ROOHANI:

15 Q. He paraphrased that section to you; correct?

16 A. What does paraphrase mean exactly?

17 Q. That was your language, Mr. Fuechtener --

18 A. No, it was --

19 Q. -- so why don't you tell me?

20 A. My lawyer said that.

21 Q. Okay. You answered her question "Yes."

22 So you tell me what you think paraphrase means.

23 A. Okay. Shall I --

24 Q. No. What does paraphrase mean to you?

25 A. Going over points and making -- giving a -- like

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1 a -- see, now I'm looking for a word. I'm looking for the  
2 German word like -- like when you see a movie and you  
3 explain to your husband after the movie -- what an awful  
4 movie, you explain like in five minutes, and you say what  
5 happened in the movie and go -- like you give a compact  
6 overview over a paragraph with your own words.

7 Q. Do you --

8 A. Not with the words in here. He uses his own words  
9 and says this means this, this means that, that what I  
10 understand. I'm not paraphrasing. And that's what I think  
11 he did.

12 Q. So he used the word "explain" twice when you told me  
13 he paraphrased.

14 So from now on when I say the word "explain," I  
15 mean paraphrase. Okay?

16 MS. CONNOLLY: Objection.

17 THE WITNESS: No, that's not explaining.

18 It's --

19 BY MS. ROOHANI:

20 Q. That was your words, Mr. Fuechtener.

21 A. Yeah, then I used the --

22 MS. CONNOLLY: Objection. She's misstating --

23 THE WITNESS: -- wrong words.

24 MS. CONNOLLY: -- what he said again. He just  
25 said --

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1                   THE COURT: Sustained. You're being  
2 argumentative.

3 BY MS. ROOHANI:

4       Q.       Mr. Durham showed you --

5                   THE COURT: He's using the word explaining, but  
6 he's describing summarizing, which is exactly what  
7 Mr. Durham said that he said -- he did, summarized each  
8 section.

9                   MS. ROOHANI: Okay.

10                   So would you like for me to use the word  
11 summarize? I'm not trying to be argumentative, Your Honor.  
12 Just tell me what word to do, I guess, when I'm talking  
13 about this. Explain? That's what my brain goes to. But  
14 if you want me to use paraphrase, I'm happy to use  
15 paraphrase. If you want me to use summarize, I'm happy to  
16 use that too.

17                   THE COURT: Ms. Connolly?

18                   MS. CONNOLLY: I would ask summarize. I  
19 believe --

20                   MS. ROOHANI: All right.

21                   MS. CONNOLLY: -- Mr. Durham said he summarized.

22                   MS. ROOHANI: Okay. Fair enough.

23 BY MS. ROOHANI:

24       Q.       Mr. Durham summarized the section on the sentencing  
25 guidelines to you; correct?



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1 A. As he thought it is correct, as he understood it,  
2 yeah.

3 Q. He summarized that for you; correct?

4 A. Yeah.

5 Q. Okay. And in that section it says "Specific Offense  
6 Characteristics"; correct?

7 A. Yes.

8 Q. So he summarized specific offense characteristics  
9 for you as well; correct?

10 A. Yes.

11 Q. All right. So he summarized that section for you?

12 A. Yes.

13 Q. That section includes things that says "Prepubescent  
14 Minor" --

15 A. Yes.

16 Q. -- correct?

17 He summarized that for you?

18 A. Let's see. Which page was that?

19 Q. 7 and 8.

20 A. Oh, yeah, I got it. Page 7. Yes.

21 Q. And he summarized knowing distribution for you?

22 A. That he just -- these things he just read to me.

23 Q. So he read it to you?

24 A. Uh-huh.

25 Q. Okay. So you knew it was in the plea agreement?

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1 A. Yes.

2 Q. And you knew it was directly under a section called  
3 Specific Offense Characteristics?

4 A. I didn't -- I mean, he was behind the mesh. I had  
5 no documents. Yeah, he went over it. I mean, he read it,  
6 yeah, okay.

7 Q. He showed you the sentencing table, Mr. Fuechtener,  
8 didn't he?

9 A. No, he didn't.

10 Q. He showed you that a level 40 corresponded to 292  
11 to --

12 A. No, he didn't.

13 Q. -- 365 months?

14 And that's why when Judge Navarro asked you if  
15 your attorneys answered all your questions about the plea  
16 agreement, you said "Yes"?

17 A. That was not why I said "Yes."

18 Q. You told Judge Navarro that your attorneys answered  
19 all your questions for you; correct?

20 A. Yes.

21 Q. You did that under oath?

22 A. Yes.

23 Q. You know what under oath means?

24 A. Yes.

25 Q. And Judge Navarro asked you if you had sufficient

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1 time to talk to your attorneys about the guidelines.

2 Do you remember that?

3 A. Yes.

4 Q. And she asked you if they talked to you about how  
5 they might apply to the facts in your particular case?

6 A. Yes.

7 Q. Do you remember that?

8 And you said "Yes"?

9 A. Well, I think it's not a yes-or-no answer.

10 Q. Did you --

11 A. I mean, I said "Yes," yeah. I did.

12 Q. You said "Yes"?

13 A. Yeah. It's on the record.

14 Q. And you did that under oath?

15 A. Yes.

16 Q. And Judge Navarro asked you if your attorneys  
17 answered all of your questions about the guidelines;  
18 correct?

19 A. Yes.

20 Q. And you said "Yes"?

21 A. Yes.

22 Q. You didn't tell her, that's not a yes-or-no  
23 question; correct?

24 A. No.

25 Q. You said "Yes," unequivocally?

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1 A. Yes.

2 Q. You testified on direct that you saw that number 40  
3 in the plea agreement.

4 Do you remember that?

5 A. When I was back in Henderson.

6 Q. You never --

7 A. But I testified --

8 Q. -- saw the number 40 in the courtroom?

9 A. Well, I -- yeah, I saw it.

10 Q. And you saw that in a section called Guidelines?

11 A. I don't recall that.

12 Q. Tell me what the heading of that section is,

13 Mr. Fuechtener.

14 A. Application of Sentencing Guideline Provisions.

15 Q. Okay. And you heard Judge Navarro ask me to  
16 summarize the terms of the plea during that colloquy.

17 Do you remember that?

18 A. Yes.

19 Q. And you heard me talk about the guidelines when I  
20 summarized it; correct?

21 A. Yes.

22 Q. And that's why when Judge Navarro asked you if you  
23 understood everything I said, you said "Yes"?

24 A. Yes.

25 Q. And then you heard Judge Navarro ask you if you had

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1 enough time to talk to your attorneys about the guidelines?

2 A. Yes.

3 Q. And whether they explained to you how they apply to  
4 the facts of your case?

5 A. Yes.

6 Q. And you said "Yes"?

7 A. Yes, I did.

8 Q. And you heard Judge Navarro ask you if your  
9 attorneys had answered all your questions about the plea  
10 agreement?

11 A. Yes.

12 Q. And you heard Judge Navarro ask you if your  
13 attorneys answered all your questions about the guidelines;  
14 correct?

15 A. Yes.

16 Q. Okay. And you never said to her, Wait, what are you  
17 talking about, what are the guidelines; correct?

18 A. No.

19 Q. At the beginning of that hearing, Judge Navarro  
20 said, "If you have any questions you can ask me."

21 Do you remember that?

22 A. Yes.

23 Q. You didn't ask her any questions; correct?

24 A. I told you earlier that the word "guidelines" for me  
25 meant something different than it actually does.

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1           So that's why I never asked that question in the  
2 first place, because I didn't know what I didn't know what  
3 I have to ask.

4       Q.     Okay. I believe you said that you thought the  
5 guidelines meant the statutory minimum and the statutory  
6 maximum; is that right? That's what you told --

7       A.     Yeah, like in every contest, like a minimum and a  
8 maximum, that is a range, and I thought they talked about  
9 that range.

10      Q.     Mr. Fuechtener, go ahead and look at page 9 of that  
11 plea agreement.

12      A.     Okay.

13      Q.     There's a heading under number -- the Roman numeral  
14 seven. Can you read that for me?

15      A.     Additional Sentencing Information?

16      Q.     No, on page 9 --

17      A.     Yeah.

18      Q.     -- there's --

19      A.     Application of Sentencing Statutes?

20      Q.     Uh-huh.

21      A.     Yeah.

22      Q.     What does the header of "A" say?

23      A.     "Maximum Penalty."

24      Q.     And does that talk about the statutory maximum?

25      A.     Yes.

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1 Q. And B?

2 A. Yes.

3 Q. That talks about the mandatory minimum?

4 A. Yes.

5 Q. There's a whole separate section that deals with --

6 A. Yeah.

7 Q. Okay. But it's your testimony that you thought that  
8 the guidelines were talking about that?

9 A. Yes.

10 Q. All right. Let's talk about Mr. Humphries. You had  
11 indicated in your motion that a fellow inmate had told you  
12 about the guidelines.

13 Do you remember?

14 A. Yes.

15 Q. Did you read the motion that Ms. Connolly filed --

16 A. Yes.

17 Q. -- for you?

18 And in that motion it said that he talked to you  
19 about the guidelines that evening that you changed your  
20 plea; correct?

21 A. Yes.

22 Q. And I believe you testified on direct that that was  
23 Mr. Humphries; right?

24 A. Yes.

25 Q. And it was your testimony that when you were housed

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1 at Henderson, you were next door to Mr. Humphries in terms  
2 of --

3 A. Yes.

4 Q. You guys were friends?

5 A. Say it again?

6 Q. Were you friends?

7 A. Well, that is a hard word to use in a jail  
8 surrounding. But I am -- he's about the age of my husband.  
9 I found some trust in him. And he seemed like a smart man.

10 And I latched a little -- like you -- is that  
11 the right word --

12 Q. Sure.

13 A. -- like -- yeah.

14 Q. Okay. He was nice to you?

15 MS. CONNOLLY: Object.

16 THE WITNESS: Well, he's not always nice, but he  
17 was, like -- yeah, I -- we -- we talked to each other.

18 BY MS. ROOHANI:

19 Q. Okay. You talked to each other?

20 A. Yeah.

21 Q. You weren't enemies?

22 A. He gave me advice.

23 Q. Okay. Perfect. He gave you advice?

24 Is Mr. Humphries a lawyer?

25 A. No.



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1 Q. Has he ever gone to law school?

2 A. No.

3 Q. Has he ever studied the sentencing guidelines?

4 A. No.

5 Q. Any formal education regarding law --

6 A. I don't know. I don't think so.

7 Q. Okay. You don't think that he --

8 A. No.

9 Q. And you talked to each other about your cases;  
10 right?

11 A. Yes.

12 Q. Talked to each other about what you were each  
13 accused of?

14 A. Say that again.

15 Q. You talked to each other about what you were accused  
16 of?

17 A. Yes.

18 Q. You talked to each other about what you did and did  
19 not do?

20 A. Yes.

21 Q. And in the motion it says that that night  
22 Mr. Humphries is the person who explained the guidelines to  
23 you; correct?

24 A. Yes.

25 Q. And it's your testimony that he explained the

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1 specific offense characteristics to you; correct?

2 A. Yes.

3 Q. He -- I'm trying to be clear. Is it your testimony  
4 that he explained to you the enhancement for prepubescent  
5 minor?

6 A. He didn't mention it like that. I mean, I can tell  
7 you exactly what, to make it clear.

8 Q. Well, let me ask you a question.

9 You just told me that Mr. Durham read that to  
10 you; correct?

11 A. Yes.

12 Q. But it's your testimony that Mr. Humphries explained  
13 it to you?

14 A. It's -- I mean, yeah. Yes.

15 Q. Okay. He explained what the enhancements were?

16 A. We talked about points and accumulation of points  
17 and a translation to a -- to a sentencing to a  
18 recommended -- I mean, to a guideline range which the judge  
19 uses as a starting point. And that concept was totally new  
20 for me.

21 Mr. Durham didn't talk about that with me.

22 Q. Okay.

23 A. He went over and read this -- he read those -- those  
24 enhancements, which I didn't know that it -- how that whole  
25 concept of enhancement works. At that time he read that,

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1 and there were points behind it which could be -- which I  
2 didn't know what they relate to.

3 Q. And Mr. --

4 A. And then it was -- and then he went to the next  
5 point.

6 Q. Mr. Humphries is the person who explained that to  
7 you. That's your testimony; right?

8 A. He explained to me how that all adds up in a, like,  
9 standard case. And from what he knew and -- that came --  
10 added up to 32 or 33.

11 And then for the first time I heard that that  
12 translates to years. I never heard that before, that  
13 that's -- that that has something to do with it.

14 Q. But it was your testimony on direct that you thought  
15 that the guidelines talked about the statutory minimum of  
16 five years and the --

17 A. Yeah, I wouldn't --

18 Q. -- statutory maximum.

19 A. Yeah, back then I wouldn't call it statutory.

20 Q. Okay.

21 A. I knew that it was a range, yeah.

22 Q. Of years?

23 A. Yes.

24 Q. Okay. And it's your testimony that Mr. Humphries  
25 explained that pattern of behavior enhancement to you?

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1 A. Mr. Humphries?

2 Q. That was your testimony.

3 A. No, he didn't explain that --

4 MS. CONNOLLY: Misstates his testimony.

5 THE WITNESS: -- to me.

6 BY MS. ROOHANI:

7 Q. So he explained the guideline --

8 MS. CONNOLLY: He was not allowed to say what

9 Mr. Humphries said to him.

10 THE COURT: That's true.

11 BY MS. ROOHANI:

12 Q. And so I'm asking you, did Mr. Humphries explain the  
13 pattern of behavior enhancement --

14 A. No.

15 Q. -- to you? Okay.

16 But it's your testimony that he explained to you  
17 what a level 40 meant?

18 A. No. We just -- we didn't have a sentencing table at  
19 hand.

20 Q. Okay. So in your motion when you say that he's the  
21 one who told you what your sentencing exposure was, did  
22 Mr. Humphries have the guideline table memorized?

23 MS. CONNOLLY: Your Honor, I'm going to object  
24 to the reference of -- he never signed the motion. So  
25 she's trying to use the motion to --

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1 MS. ROOHANI: Okay.

2 MS. CONNOLLY: He never signed the motion. He  
3 signed an affidavit.

4 MS. ROOHANI: I'd love to address that, Your  
5 Honor.

6 THE COURT: Okay. Go ahead and address that  
7 instead.

8 BY MS. ROOHANI:

9 Q. Mr. Fuechtener, you signed an affidavit in this  
10 case; correct?

11 A. Yes.

12 Q. All right. Who wrote that affidavit?

13 A. Ms. Connolly.

14 Q. Did you read it before you signed it?

15 A. Yes.

16 Q. You understood that when you were swearing and  
17 deposing and saying --

18 A. Yes.

19 Q. -- that you were doing it under the penalty of  
20 perjury?

21 A. Yes.

22 Q. Have you looked at that recently?

23 A. Yes.

24 Q. Okay. And in that you swear under the penalty of  
25 perjury that you read the motion to withdraw; correct?

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1 A. Yes.

2 Q. And you said, you swore under the penalty of  
3 perjury, that all of the factual assertions set forth  
4 therein are accurate; correct?

5 A. Yes.

6 Q. So you were effectively swearing to all the factual  
7 assertions --

8 A. Yes.

9 Q. -- in the motion; correct?

10 A. Yes.

11 Q. All right. Now let's talk about the motion.

12 In that motion you swore under the penalty of  
13 perjury, through that affidavit --

14 MS. CONNOLLY: Objection. He didn't say  
15 anything in the motion under penalty of perjury.

16 THE COURT: It's an affidavit.

17 BY MS. ROOHANI:

18 Q. In the affidavit you were talking about the motion  
19 that I'm referring to; correct?

20 A. Yes.

21 Q. All right. In that affidavit you swore that  
22 everything in the motion was true?

23 A. Yes.

24 Q. You read that motion?

25 A. Yes.

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1 Q. Read it recently?

2 A. Not recently.

3 Q. You read it before you signed the affidavit, though?

4 A. Yeah. Yeah.

5 Q. Were you incorporating the motion into the  
6 affidavit?

7 A. The affidavit, if I remember right, came -- came way  
8 later. It came after your response and after the whole  
9 lawyer thing. So yeah. It was later. And I haven't read  
10 it before I signed the affidavit.

11 Q. You didn't read the motion before you signed the  
12 affidavit?

13 A. Not -- I mean, probably a month before. But not  
14 before I signed it again.

15 Q. Ms. Connolly represents you; right?

16 A. Yes.

17 Q. She's your agent?

18 A. Yes.

19 Q. She can make statements on your behalf to the Court?

20 A. Yes.

21 Q. And so when you swear that her statements are true  
22 in that motion, they become your statements; right?

23 A. Yes.

24 Q. All right. So you said in that motion that  
25 Mr. Humphries is the one who told --

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1 MS. CONNOLLY: Objection. He didn't say  
2 anything in that motion.

3 Why don't you just say -- continually  
4 misrepresenting what he said or didn't say or -- or didn't  
5 say.

6 He didn't sign the motion. So why does she keep  
7 saying he signed the motion? Or he said something in the  
8 motion?

9 THE COURT: He signed an affidavit swearing that  
10 all the information in the motion was true and correct.

11 MS. ROOHANI: May he answer the question, Your  
12 Honor?

13 THE COURT: You may answer the question.

14 MS. ROOHANI: Thank you.

15 BY MS. ROOHANI:

16 Q. You wrote in that affidavit or swore in the  
17 affidavit that everything in the motion --

18 A. Yes.

19 Q. -- was true? Okay.

20 And in that motion it says that Mr. Humphries is  
21 the person who told you that night --

22 A. Uh-huh.

23 Q. -- that the level 40 corresponds to 292 to 365  
24 months; correct?

25 A. Yes.



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1 Q. That's not true; correct?

2 A. Well, he -- I mean, I said that earlier. He -- we  
3 talked about what a 33 is and so we knew it's not -- I  
4 mean --

5 Q. He didn't --

6 A. -- it's over 20 years, and it is over 20 years. So  
7 he told me the right thing. I mean --

8 Q. Did he tell you that the number 40 corresponded to  
9 292 to 300 --

10 A. Not exactly. But --

11 Q. If he didn't exactly say that, then it's not true  
12 that Mr. Humphries is the person who told you that night  
13 what your real sentencing exposure was; correct?

14 A. That's a legal question. I -- I mean --

15 Q. Did he tell you that the 40 corresponded to 292 to  
16 365 months?

17 A. No.

18 Q. Okay. You testified that you called Jess the first  
19 thing the next morning and --

20 A. Yes.

21 Q. -- to get out of the plea?

22 Now, during your time at Henderson, and later  
23 when you were together at Pahrump, Mr. Humphries made some  
24 admissions to you; correct?

25 A. What do you mean by "admissions"?

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1 Q. He told you some things about his case?

2 A. Is admission like he -- I mean --

3 Q. That he was guilty?

4 MS. CONNOLLY: Objection. It would call for  
5 hearsay.

6 THE WITNESS: See, now I would need to look up  
7 the word "admission."

8 MS. CONNOLLY: Excuse me, I have an objection to  
9 anything --

10 THE COURT: Sustained.

11 MS. CONNOLLY: -- the content of anything --

12 BY MS. ROOHANI:

13 Q. You told Mr. Marchese -- this is not offered, Your  
14 Honor, for the truth -- that Mr. Humphries made admissions  
15 to you?

16 A. I didn't say --

17 MS. CONNOLLY: Assumes facts not in evidence.

18 THE WITNESS: We talked about his case.

19 BY MS. ROOHANI:

20 Q. You talked about his case?

21 A. We talked about his case.

22 Q. The facts of his case?

23 A. We talked about his case.

24 Q. You told Mr. Marchese that you talked about  
25 Mr. Humphries's case?

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1       A.       Yes.

2               MS. CONNOLLY:  Objection.  Anything he said to  
3 Mr. Marchese is attorney-client privilege.

4               THE COURT:  No, he's already waived that.

5               MS. CONNOLLY:  I guess we have the parroting  
6 here.

7               THE COURT:  He's already waived it.

8               MS. ROOHANI:  I'm sorry, Your Honor?

9               THE COURT:  Go on.  He's -- Mr. Fuechtener has  
10 waived his attorney-client privilege --

11              MS. ROOHANI:  Thank you.

12              THE COURT:  -- with Mr. Marchese.

13 BY MS. ROOHANI:

14       Q.       And you asked Mr. Marchese how you could use that  
15 information to your advantage?

16       A.       Say it again?

17       Q.       You asked --

18       A.       No, I didn't ask him that.

19       Q.       You never told Mr. Marchese to tell the government  
20 about the things about Mr. Humphries?

21       A.       Mr. Marchese was leading that conversation.  I never  
22 asked him anything about something like that.

23       Q.       You had a conversation with Mr. Marchese about that?

24       A.       That was the next day when Mr. -- he was there with  
25 Mr. Pacitti, and it was mainly about the plea.

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1 Q. Did you have a conversation with Mr. Marchese about  
2 Mr. Humphries's case?

3 A. Yes.

4 Q. And about certain things that Mr. Humphries told  
5 you?

6 A. It's over a year. I don't remember what exactly we  
7 talked.

8 Q. Did you talk about how good looking Mr. Humphries  
9 was?

10 A. No.

11 Q. Did you talk about Mr. Humphries's case?

12 MS. CONNOLLY: I'm sorry. I didn't hear that.

13 THE WITNESS: Well, we talked also about other  
14 things, about not how good looking he is, but about private  
15 things, we talk about things --

16 MS. CONNOLLY: Objection.

17 THE WITNESS: I mean --

18 MS. CONNOLLY: -- into what discussions --

19 MS. ROOHANI: State of mind, Your Honor.

20 MS. CONNOLLY: Anything that Mr. Humphries said  
21 would be hearsay.

22 MS. ROOHANI: Not for its truth, Your Honor.

23 THE COURT: The question was not what  
24 Mr. Humphries said, the question was whether this defendant  
25 spoke to Mr. Marchese about what information he had

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1 received about Mr. Humphries and Mr. Humphries' case from  
2 Mr. Humphries.

3 BY MS. ROOHANI:

4 Q. You talked to Jess about that?

5 A. We talked about this case.

6 Q. Okay. Now, you have heard -- just a moment.

7 When you talked to Mr. Marchese about  
8 Mr. Humphries, part of that conversation was about how you  
9 could use that information to help you in your case;  
10 correct?

11 A. I don't remember that.

12 Q. You indicated that Mr. Humphries got his information  
13 from Mr. Riddle.

14 Do you remember that?

15 MS. CONNOLLY: Objection. He indicated he  
16 didn't remember what he discussed.

17 THE COURT: Overruled. He can answer the  
18 question.

19 BY MS. ROOHANI:

20 Q. You indicated on direct that Mr. Humphries got  
21 his --

22 A. Yes. About --

23 Q. -- information from Mr. --

24 A. -- the sentencing guidelines and the points and the  
25 application and the translation to years.

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1 Q. From Mr. Riddle?

2 A. Yes.

3 Q. Do you know that Mr. Riddle hasn't represented  
4 Mr. Humphries in about four years?

5 A. Oh, yes. But he knew that exactly because he -- he  
6 just knew it. I mean --

7 Q. But you don't know if that was correct; right?

8 A. I -- no. I -- I highly, highly assumed that this is  
9 correct because Mr. Riddle is familiar with deals.

10 Q. But you're getting your information secondhand;  
11 correct?

12 A. Yeah. But better than -- better than -- I mean, I  
13 didn't get it from my lawyer, so I had to get it  
14 secondhand, yeah.

15 Q. So you don't know for sure that what Mr. Humphries  
16 told you was legally correct; right?

17 A. At that moment, I -- for me it was, yeah --

18 Q. I understand --

19 A. It was --

20 Q. I understand that you believed it.

21 A. Uh-huh.

22 Q. Do you know for certain that the information that  
23 Mr. Humphries gave you was legally correct?

24 MS. CONNOLLY: Objection to relevance.

25 THE COURT: Overruled. It is relevant. He can

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1 answer the question.

2 THE WITNESS: Well, in the same way as I thought  
3 that Mr. Durham's information was correct.

4 BY MS. ROOHANI:

5 Q. So you think that Mr. Humphries, who has never gone  
6 to law school, is the equivalent of Mr. Durham who has?

7 A. In certain things, yes.

8 Q. Okay. So not what you believe. You know that the  
9 information that Mr. Humphries gave you is correct?

10 A. I highly --

11 MS. CONNOLLY: Objection, calls for spec --

12 THE WITNESS: -- trusted. I don't know.

13 MS. CONNOLLY: Lack of foundation.

14 BY MS. ROOHANI:

15 Q. You don't know --

16 A. I don't know.

17 MS. CONNOLLY: Lack of foundation.

18 THE WITNESS: I don't know.

19 MS. CONNOLLY: Lack of foundation as to whether  
20 or not he would know whether the information he was given  
21 was correct.

22 THE WITNESS: I couldn't check it there.

23 BY MS. ROOHANI:

24 Q. So you don't know?

25 A. So, no, of course, I don't know.

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1 Q. All right.

2 THE COURT: Overruled.

3 BY MS. ROOHANI:

4 Q. You've heard Ms. Connolly make some arguments about  
5 conflict of interest during these proceedings; right?

6 A. Yes.

7 Q. And that conflict of interest was based on Frank  
8 being an alternative suspect? Is that --

9 A. Not mainly.

10 MS. CONNOLLY: Objection.

11 BY MS. ROOHANI:

12 Q. What -- whatever your understanding is.

13 What was your understanding about how this  
14 conflict of interest worked?

15 A. That one lawyer can't represent two different  
16 persons with different interests.

17 Q. Okay. And so the different interest is Frank could  
18 be the suspect; right?

19 A. Yeah.

20 Q. Okay. Let's go back to the time of the search  
21 warrant when you talked to Mari.

22 A. Yes.

23 Q. You told Mari it wasn't Frank; right?

24 A. I told her I would put my hand in the fire for Frank  
25 that he wouldn't do something like that.



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1 Q. Okay. And you explained that German saying to her;  
2 right? It's a German saying?

3 A. Yeah, I used the German saying.

4 Q. Okay. But you translated that into English?

5 A. Without a translator, yes.

6 Q. Okay. So you translated a saying into English  
7 because Mari doesn't speak German?

8 A. No.

9 Q. To your knowledge.

10 So you translated and you said, "I would put my  
11 hand in the fire that --

12 A. Yeah --

13 Q. -- "it's not Frank?"

14 A. -- we say that in Germany when we think something.

15 Q. Which means it's not Frank? That's what you  
16 believed?

17 A. At that point, yeah.

18 Q. All right. And when you talked to Special Agent  
19 Gary McCamey at the time of the polygraph, you told him,  
20 "It's not Frank and it's not Kevin."

21 Do you remember that?

22 A. No, I don't remember that.

23 I can't say that because I don't -- I can't make  
24 that statement.

25 Q. Did you first tell Special Agent McCamey that you

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1 did not know who put those files on your computer?

2 A. I don't recall that conversation. But if you have  
3 it on -- I mean, you have it there.

4 Q. Well, it doesn't matter what I have here, Jan, I  
5 need to remember -- I need to know what you remember.

6 A. I don't.

7 Q. Okay. Did you -- so I'll just ask you again.

8 Did you tell him at first that you didn't know  
9 who put it on your computer?

10 A. Yes.

11 Q. And you told him that --

12 A. I mean, my computer, which is --

13 MS. CONNOLLY: Object to --

14 THE WITNESS: -- you know, it's --

15 MS. CONNOLLY: -- relevance of this.

16 THE WITNESS: I don't want to say things here --

17 THE COURT: Overruled.

18 THE WITNESS: -- which -- there is no my  
19 computer. I mean --

20 BY MS. ROOHANI:

21 Q. Okay. The devices in your house. You told him you  
22 don't know how it got there?

23 A. I -- I don't know what I told him.

24 Q. Okay. You told him that you did not think that  
25 Frank or Kevin were responsible?

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1 A. I don't --

2 MS. CONNOLLY: Objection. He testified he --

3 THE WITNESS: -- know.

4 MS. CONNOLLY: -- didn't know what he told them,  
5 so --

6 THE COURT: Overruled. She can ask the question  
7 to try to remind him or refresh his recollection.

8 BY MS. ROOHANI:

9 Q. You told Special Agent McCamey that you did not  
10 think that Frank or Kevin were --

11 A. I --

12 Q. -- respons- --

13 A. It's more than two years, that conversation. I --

14 Q. Do you remember Special Agent McCamey testifying  
15 during trial?

16 A. Yeah. Yes.

17 Q. Do you remember him testifying about that during  
18 trial?

19 A. I don't remember that.

20 Q. Okay. When the search warrant was executed at your  
21 house, there was actually some child porn playing in the  
22 casita; correct?

23 A. I don't know.

24 Q. You heard the evidence at trial --

25 A. And I think there was nothing playing.

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1 Q. It was paused --

2 A. I don't know.

3 Q. -- on the computer --

4 A. I don't know.

5 Q. -- in the casita?

6 You don't remember hearing that testimony  
7 during trial?

8 MS. CONNOLLY: Object.

9 THE WITNESS: I heard --

10 MS. CONNOLLY: It's beyond --

11 THE WITNESS: -- that testimony, yeah.

12 MS. CONNOLLY: It's beyond the scope of --

13 BY MS. ROOHANI:

14 Q. You heard the testimony during trial?

15 MS. CONNOLLY: Object. It's beyond --

16 THE WITNESS: That something was paused, yeah.

17 MS. CONNOLLY: Objection. Beyond the scope of  
18 direct examination and relevance.

19 THE COURT: Sustained.

20 BY MS. ROOHANI:

21 Q. You told Special Agent McCamey that it was some guy  
22 called -- that you called Ferrell?

23 MS. CONNOLLY: I object to the relevance of  
24 this.

25 THE COURT: Overruled. He can answer the

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1 question.

2 BY MS. ROOHANI:

3 Q. You told Special Agent McCamey that the way that  
4 the child porn --

5 A. At that point I was guessing what could have  
6 happened, and I mentioned that person, yeah.

7 Q. Okay. And you said that -- you guessed -- so it's  
8 your testimony today that you guessed that it was somebody  
9 named Ferrell?

10 MS. CONNOLLY: I'm going to object to the  
11 relevance of this entire line of questioning.

12 THE COURT: Overruled.

13 BY MS. ROOHANI:

14 Q. You guessed that it was Ferrell?

15 A. Well, it's hard for me to now say what I did two  
16 years ago and how I -- there was a search. And at the same  
17 day, I mean, they -- I got up at, what was it, 7:30, 8:00,  
18 and then --

19 Q. I'm -- let me --

20 A. No, it was in the afternoon there was this interview  
21 surrounding that lie detector, and I at that point thought  
22 what could have happened. And --

23 Q. That's all I'm trying to figure --

24 A. And that's why I --

25 Q. Okay.

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1 A. -- was honest with Mr. McCamey and --

2 Q. Fair enough. Okay. That's all I'm trying to figure  
3 out.

4 A. Okay.

5 Q. Fair enough.

6 So at the beginning of your interview with  
7 Special Agent McCamey, you said, "I don't -- I don't know  
8 who it could be."

9 And then later on -- correct?

10 A. I don't know what I -- what I --

11 Q. Okay. That's fine.

12 You don't remember?

13 A. I don't remember.

14 Q. Later on in the interview you told him, "I think  
15 it's this guy Ferrell, he must have been the one who put  
16 the child porn on the computers"; correct?

17 A. I don't remember.

18 Q. Okay. And it's your testimony that you don't  
19 remember anything that happened at trial regarding this  
20 testimony; correct?

21 A. Certain things.

22 MS. CONNOLLY: Objection. Misstates his  
23 testimony.

24 BY MS. ROOHANI:

25 Q. You remember the testimony?

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1 A. Certain -- yeah, certain things I remember.

2 Q. Okay. After your change of plea, Jess sent you to  
3 Dr. Chambers; correct?

4 A. Yes.

5 Q. Okay. And you submitted to a psychosexual  
6 evaluation?

7 A. I don't know if it was that.

8 Q. What did you think it was?

9 MS. CONNOLLY: Objection, relevance.

10 THE COURT: Ms. Connolly, can you turn the  
11 microphone so it's like down towards the --

12 MS. CONNOLLY: This one.

13 THE COURT: The one that's in front of you.  
14 Yeah. There you go. It bends, so you can just pull it  
15 down, so I can hear you.

16 MS. CONNOLLY: Objection. Relevance.

17 THE COURT: There you go. I hear you.

18 Okay. What is the relevance, Ms. Roohani?

19 MS. ROOHANI: He made inconsistent statements to  
20 Dr. Chambers, as well, Your Honor.

21 THE COURT: All right.

22 BY MS. ROOHANI:

23 Q. Do you remember talking to Mr. -- Dr. Chambers?

24 A. Yes.

25 Q. Okay. Do you remember telling Dr. Chambers that all

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1 the child porn had been downloaded by Joel?

2 MS. CONNOLLY: Again, object to the relevance of  
3 this, what it has to do with his request to withdraw his  
4 plea.

5 THE COURT: Credibility, Ms. Roohani?

6 MS. ROOHANI: Absolutely, Your Honor.

7 THE WITNESS: I don't think that I said that.

8 BY MS. ROOHANI:

9 Q. If I showed you Dr. Chambers' report, would that  
10 help reference your recollection?

11 A. Well, that's his report. It --

12 Q. Would it --

13 A. It's not --

14 Q. -- help you remember what you talked to him about?

15 A. No.

16 Q. It won't help you remember?

17 A. No.

18 Q. Okay. So you don't remember telling Dr. Chambers  
19 that it was Joel?

20 MS. CONNOLLY: Objection.

21 THE WITNESS: When -- I mean --

22 MS. CONNOLLY: Asked and answered.

23 THE COURT: Overruled. He can answer that  
24 question.

25 Do you remember telling Dr. Chambers that it was



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1 Joel who looked at the child pornography?

2 THE WITNESS: We talked about him, but I  
3 don't -- I don't think he said it that way.

4 THE COURT: Are Joel and Ferrell the same  
5 person --

6 THE WITNESS: No.

7 THE COURT: -- just in case? Okay.

8 MS. CONNOLLY: And just for my edification, I  
9 don't know how -- if this was -- could I see what --

10 MS. ROOHANI: And, Your Honor, just for the  
11 record, this is part of the psychosexual evaluation that  
12 was included as part of the PSR that Ms. Connolly has been  
13 referring to; so I believe it's actually within Your  
14 Honor's -- it's not really judicial notice, but I think  
15 it's within the purview of the PSR.

16 MS. CONNOLLY: Is this attached to something  
17 that's already been filed? I've never seen this, so I'm --  
18 my question would be how did the government become in  
19 possession of this? I've never seen this document.

20 MS. ROOHANI: It was forwarded to me by his  
21 former counsel.

22 MS. CONNOLLY: I'm sorry. I can't hear you.

23 MS. ROOHANI: It was forwarded to me by his  
24 former counsel in anticipation of sentencing after the  
25 first draft of the PSR came out.

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1                   THE COURT: It was not -- it was not filed  
2 because it was a change of counsel; right?

3                   MS. ROOHANI: It wasn't filed, Your Honor,  
4 because it's a sensitive document, and I think that it was  
5 intended to be attached to the PSR at the time of  
6 sentencing. It's directly referenced in the PSR, Your  
7 Honor.

8                   MS. CONNOLLY: I have concerns about whether or  
9 not this should have been provided, if it -- if  
10 Mr. Fuechtener was made aware it was going to be provided.

11                   He obviously has a -- you know, a doctor-patient  
12 privilege. I've never seen this before. It was never  
13 provided to me when I was provided a copy of the file.

14                   THE COURT: I'm looking at the presentence  
15 report.

16                   MS. ROOHANI: I can tell you the paragraph, Your  
17 Honor, if you give me a moment.

18                   Paragraph 87.

19                   THE COURT: 87. Okay.

20                   MS. ROOHANI: And, Your Honor, I'm a little bit  
21 concerned, considering that Ms. Connolly is  
22 Mr. Fuechtener's counsel and that he hasn't communicated to  
23 her that he interviewed with Dr. Chambers.

24                   If you look at the report, and I can provide  
25 Your Honor with a copy of it, specifically indicates that

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1 he was referred to Dr. Chambers by his prior counsel.

2 Mr. Fuechtener has indicated that on -- during  
3 his testimony as well. And specifically on page 2 it says  
4 that he was informed of the purpose of the evaluation and  
5 the limits of the confidentiality, that this report would  
6 be provided to the Court and opposing counsel.

7 MS. CONNOLLY: I've just -- I've never seen it  
8 until now, so --

9 MS. ROOHANI: If she'd like to take time to  
10 review it, Your Honor, I'm happy to give that to her.

11 THE COURT: All right. Let's do that.

12 MS. ROOHANI: And just for the record, Your  
13 Honor, it's specifically to impeach Mr. Fuechtener based on  
14 a prior inconsistent statement.

15 MS. CONNOLLY: If you could refer me to the  
16 portion of it, we may be able to -- I may not have an issue  
17 with it.

18 MS. ROOHANI: Page 2, defendant's current  
19 offense.

20 MS. CONNOLLY: Where? Can you just show me  
21 where you're at.

22 MS. ROOHANI: The paragraph here.

23 MS. CONNOLLY: Okay.

24 MS. ROOHANI: As well as the following page.  
25 Maybe we can take a break --

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1 MS. CONNOLLY: I don't -- this is -- you can ask  
2 him. I don't -- you can ask him about this.

3 MS. ROOHANI: Your Honor, do we want --

4 MS. CONNOLLY: And I don't think it's a prior  
5 inconsistent -- this is a document -- it would be a prior  
6 inconsistent statement if it was something that he had  
7 written. This is a document that's written by a third  
8 party who is not here in court to testify.

9 So it's in the report doesn't necessarily mean  
10 it's a verbatim statement that was made by Mr. Fuechtener.  
11 It's not his statement. It's not a written statement  
12 signed by him or an oral statement recording of what he  
13 said. So it wouldn't be a prior inconsistent statement.

14 THE COURT: My guess is that if she asks him and  
15 he denies making that statement, then Ms. Roohani can  
16 contact Dr. Chambers and have him come in, and --

17 MS. CONNOLLY: Potentially.

18 THE COURT: -- then it would be an inconsistent  
19 statement. So she can ask him whether or not he made the  
20 statements that are represented in the report and  
21 attributed to him.

22 MS. ROOHANI: Thank you, Your Honor.

23 MS. CONNOLLY: That's fine. I don't object to  
24 that.

25

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1 BY MS. ROOHANI:

2 Q. Mr. Fuechtener, did you tell Dr. Chambers that Joel  
3 was the person who was involved in file sharing networks?

4 MS. CONNOLLY: Objection. It misstates -- it  
5 misstates what -- if she's going to use this as a prior  
6 inconsistent statement, she needs to paraphrase it or  
7 indicate what it accurately says.

8 MS. ROOHANI: Your Honor, it literally reads,  
9 "Joel" --

10 MS. CONNOLLY: "Most likely" is the terminology  
11 that's in the report. So it's not prior inconsistent  
12 statement unless you accurately give him the opportunity to  
13 confirm it or deny it.

14 MS. ROOHANI: I'm happy to read the sentence,  
15 Your Honor.

16 THE COURT: All right. Go ahead and read the  
17 sentence.

18 BY MS. ROOHANI:

19 Q. Did you acknowledge that there was child pornography  
20 on the media in your home to Dr. Chambers?

21 MS. CONNOLLY: Objection. It misstates what it  
22 says.

23 THE COURT: What does it say, Ms. Connolly?

24 MS. CONNOLLY: She's taking the words she likes  
25 that are better for her case and throwing those at him and

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1 not --

2 THE COURT: What does it say? I don't have it.

3 What does it say?

4 MS. CONNOLLY: You're asking me?

5 THE COURT: Yes.

6 MS. CONNOLLY: It says:

7 Mr. Fuechtener admitted to viewing Internet  
8 pornography on his personal computers but he  
9 insisted that he was not interested in child  
10 pornography. He acknowledged that it was on the  
11 media in his home, explaining that it was most  
12 likely downloaded by his friend Joel, who was  
13 involved in file sharing networks.

14 THE COURT: All right. So it's a long --  
15 there's many different factual pieces of information in  
16 that.

17 Do you want to just ask him if he agrees or  
18 disagrees; and if he disagrees you can take it portion by  
19 portion and figure out --

20 BY MS. ROOHANI:

21 Q. Did you say that to Dr. Chambers?

22 A. I never got that report either.

23 Q. I understand --

24 A. So, yeah.

25 Q. You did say that?

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1 A. Maybe -- I mean --

2 Q. Did you tell Dr. Chambers -- or did you admit to  
3 Dr. Chambers that you viewed Internet pornography on your  
4 personal computers?

5 A. Regular pornography --

6 Q. Okay.

7 A. -- yeah.

8 Q. Did you tell Dr. Chambers that you were not  
9 interested in child pornography?

10 A. Yes.

11 Q. Did you acknowledge that it was on the media on --  
12 in your home?

13 A. Yes.

14 Q. That's referring to child pornography; correct?

15 A. Yes.

16 Q. All right. Did you explain that it was likely  
17 downloaded by Joel?

18 A. I don't think that I said it like that, likely -- I  
19 mean, there was a lot and lots of -- I mean --

20 Q. That's okay.

21 A. -- I don't --

22 MS. CONNOLLY: Judge, can she please let him  
23 answer. He's trying --

24 THE WITNESS: I think --

25 MS. CONNOLLY: -- to explain his answer, and

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1 she's talking --

2 THE WITNESS: Mr. Chamber uses this --

3 MS. CONNOLLY: -- over him.

4 THE WITNESS: -- it seems like, in an excuse --

5 MS. CONNOLLY: Wait. Hold on.

6 Judge, she keeps talking over him.

7 THE COURT: He can answer the question. Finish  
8 the question. Or he can answer the question. Go ahead and  
9 finish your answer.

10 THE WITNESS: It seems like Dr. Chambers uses --  
11 uses it as an excuse. I don't -- and I never -- first of  
12 all, I never -- I didn't hire him. He came to Henderson.  
13 And Jess never told me that he's hired. But I talked to  
14 him. He's a -- we had a long good talk. And, I mean --  
15 BY MS. ROOHANI:

16 Q. Okay. Jan?

17 A. But I never got that report. And I don't know what  
18 I said a year ago.

19 Q. That wasn't the question I asked you. Okay?

20 The question I asked you is, did you tell  
21 Dr. Chambers that there was child pornography in the media  
22 in your home?

23 A. Yes.

24 Q. And did you explain that it was likely downloaded by  
25 your friend Joel? Yes or no?



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1 A. I -- I don't know.

2 Q. Okay. Did you tell him that Joel was the one who  
3 was involved in file sharing networks?

4 A. Yes.

5 Q. Okay. Did you tell him --

6 A. I remember that.

7 Q. -- that Joel had lost his car and his apartment?

8 A. Yes.

9 Q. Did you tell him that you allowed Joel to stay in  
10 your home?

11 A. I --

12 Q. Did you tell him that? It's okay if the answer is  
13 no.

14 A. I think so.

15 Q. I just want to know, yes or no?

16 A. I mean, yeah, I think so.

17 Q. Okay. And Joel is Joel Rosales; correct?

18 A. Yes.

19 Q. Joel Rosales was on your witness list; right?

20 A. Yes.

21 Q. And that was the same Joel that was at your house  
22 when Mari executed the search warrant?

23 A. Yes.

24 Q. That was the same Joel that you didn't tell Mari was  
25 the one who downloaded the child porn; right?

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1 A. When did I say that to her?

2 Q. You did not tell Mari that it was Joel; right?

3 A. No.

4 Q. Well, you told Dr. Chambers that it was Joel?

5 A. That was --

6 MS. CONNOLLY: Objection.

7 THE WITNESS: -- a year later.

8 MS. CONNOLLY: Misstates his statement.

9 THE WITNESS: I mean --

10 BY MS. ROOHANI:

11 Q. This is the Joel who had been living at your house  
12 for some time; right?

13 A. I mean, what I talk -- what I told Mari was at the  
14 day of the search, based on my knowledge on that day, what  
15 I talked with Mr. Chambers would be way later after having,  
16 like, 4,000 pages of discovery.

17 Q. Did you tell Mari --

18 A. I mean, it makes a difference.

19 Q. Did you tell Mari that Joel had been living at your  
20 house for some time?

21 A. If I tell Mari --

22 MS. CONNOLLY: Objection, again, to relevance.

23 THE WITNESS: I don't think of -- I don't think  
24 that I told Mari that.

25

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1 BY MS. ROOHANI:

2 Q. Did you tell Dr. Chambers that Joel had been living  
3 at your house --

4 A. Yes.

5 Q. -- for some time?

6 So on direct, when Ms. Connolly asked you who  
7 were all the people who are living in your house, and you  
8 said only Kevin, that was a lie?

9 A. I wouldn't call it a lie. I mean, I don't -- at  
10 that morning there could be thousands of reason --  
11 thousands of reasons why I'm not telling her why someone is  
12 living at the house.

13 Q. On direct you testified that only Kevin was living  
14 at your house; correct?

15 A. Yes, living, yeah. Staying or -- I mean, we  
16 clarified that.

17 Q. And now your testimony is that Joel was also staying  
18 at your house?

19 A. He wasn't living there.

20 Q. Let's talk a little bit more about that affidavit,  
21 Mr. Fuechtener.

22 You wrote in the affidavit that all the factual  
23 assertions in the motion were true; correct?

24 A. Yes.

25 Q. Have you seen that motion recently?

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1 A. No.

2 Q. I'm going to ask you some questions about it. So if  
3 you need a copy of it, just let me know --

4 A. Okay.

5 Q. -- okay?

6 On page 2 does it say, "In February 2016  
7 attorney Jess Marchese was hired to represent Rouven"?

8 A. Yes.

9 Q. But you testified on direct that you hired  
10 Mr. Marchese in March of 2016; correct? Yes or no?

11 A. Give me the days again, please.

12 Q. In the motion you wrote that you hired him in  
13 February of 2016; correct?

14 A. February of --

15 MS. CONNOLLY: Objection. He didn't --

16 THE WITNESS: -- 2016 --

17 MS. CONNOLLY: -- write anything in the motion.

18 She keeps saying he wrote in the motion. He  
19 didn't write anything in the motion.

20 THE COURT: All right. He signed an affidavit  
21 swearing that the facts in the motion were correct, and he  
22 read the motion before signing the affidavit, and in that  
23 motion it said what?

24 THE WITNESS: February --

25

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1 BY MS. ROOHANI:

2 Q. "2016 attorney" --

3 A. Yes --

4 Q. -- "Jess Marchese" --

5 A. -- that's when I --

6 Q. -- "was hired" --

7 A. -- first -- it was prearrest; correct?

8 Q. I don't know.

9 A. Oh, you know.

10 Q. You would have to answer the question. I don't know  
11 why you're asking me.

12 A. Well, it has been a while.

13 Q. Okay. Yeah.

14 A. Yes, I -- I -- yeah. February --

15 Q. You read that in the motion. You swore it was true;  
16 correct?

17 A. Yes.

18 Q. You swore in your affidavit that in February 2016  
19 Jess Marchese was hired to represent you; correct?

20 A. Yes.

21 Q. And on direct, when Ms. Connolly asked you the  
22 question, you said that Jess was hired in March of 2016;  
23 correct? Yes or no?

24 A. Yeah. Yes.

25 Q. Okay. You do understand that both of those things

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1 can't be true; right?

2 A. When she asked me the dates -- I mean, that can be  
3 verified, so when she asked me if I say --

4 Q. So --

5 A. Yes, it sounded right. It sounded right, that date.  
6 And I hired him basically twice. I had him first  
7 prearrest, and he got a payment apart from his second time  
8 after the arrest, so -- when he was hired for the case. So  
9 maybe that is the misunderstanding. I don't know. Maybe  
10 there the dis- --

11 Q. So it's your --

12 A. -- dates comes from.

13 Q. It's your testimony that when you wrote in the  
14 motion February 2016, or wrote in the affidavit that  
15 incorporated the motion that it was February 2016 --

16 MS. CONNOLLY: Judge, asked and answered. He  
17 just explained it.

18 MS. ROOHANI: You need to let me finish my  
19 question. Your Honor --

20 MS. CONNOLLY: And it's relevance at this point.  
21 He just explained it. It's cumulative.

22 THE COURT: Overruled. She can finish her  
23 question.

24 BY MS. ROOHANI:

25 Q. In the motion when it says February 2016 and when

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1 you testified on direct it was March 2016, it's your  
2 testimony now that you hired Mr. Marchese twice? That's  
3 your explanation?

4 A. Yeah. That's how I could call it.

5 Q. Okay. All right.

6 A. And I don't know if this is the problem with the  
7 dates. I don't have my calendar, I don't -- I have -- I  
8 don't know when I actually hired him on the day.

9 Q. When Ms. Connolly asked you that question, you  
10 immediately agreed with her; correct?

11 A. I would assume that she has the right date. I  
12 mean --

13 Q. Okay. You assumed that she had the right date?

14 A. Uh-huh.

15 Q. Okay. On the motion, on page 7, it was written, and  
16 you affirmed that this was true, that they indicated -- and  
17 I'm skipping a portion -- that "He would get life if  
18 convicted"; correct?

19 A. That she wrote that in the motion?

20 Q. As your agent, she wrote in the motion, "They  
21 indicated he would get life if convicted." Correct?

22 A. Yes.

23 Q. You testified on direct that none of your lawyers  
24 ever told you that you would get life if you were  
25 convicted; isn't that true?

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1 A. They never gave me a --

2 MS. CONNOLLY: Object. I believe that misstates  
3 his testimony.

4 THE WITNESS: They never gave me a sentence  
5 prediction or what would happen if --

6 BY MS. ROOHANI:

7 Q. So you're maintaining that testimony, that they  
8 never told you that you would get life if you were  
9 convicted?

10 A. We didn't talk about that.

11 Q. That's your testimony; correct?

12 A. I mean, we talked -- I mean, they made a  
13 statement -- can I say that statement?

14 Q. No.

15 A. Okay.

16 Q. On the motion on page 7, you would agree with me  
17 that it reads, "In the courtroom Durham continued to read  
18 the plea agreement with Rouven"; correct?

19 A. Yes.

20 Q. All right. But you testified on direct, numerous  
21 times now, and on cross that Mr. Durham never read you the  
22 plea agreement; isn't that true?

23 A. Yes.

24 Q. You do understand that both of those two things  
25 can't be true?



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1 A. Well, we -- I think we solved that with a word.

2 Q. Mr. Fuechtener, do you understand what the word  
3 "read" means?

4 A. Yes.

5 Q. What does it mean to you?

6 A. When you read something.

7 Q. Okay. So you testified on direct that Mr. Durham  
8 never read the plea agreement to you; correct?

9 A. Yes.

10 Q. You testified that he paraphrased it for you; that  
11 he summarized it for you --

12 A. Yes.

13 Q. -- correct?

14 Are reading and paraphrasing the same thing,  
15 Mr. Fuechtener?

16 A. No.

17 Q. No. So when you affirmed in your affidavit that it  
18 was true that Mr. Durham continued to read the plea  
19 agreement with you, that was true or false?

20 A. Isn't that why we have that hearing, to bring that  
21 all out what exactly happened?

22 I mean, I talked to my lawyer, but, of course,  
23 she has to write the motion. I don't write the motion. I  
24 mean --

25 Q. Okay. You signed the affidavit?

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1 A. Yes.

2 Q. You swore under the penalty of perjury that  
3 everything in the motion was true?

4 A. Yes.

5 Q. You had read the motion at some point?

6 A. Yes.

7 Q. You swore under the penalty of perjury that  
8 everything that you had read was true?

9 A. Yes.

10 Q. And the testimony you're giving today, also under  
11 oath, is now different; correct? Yes?

12 A. I don't know. Yeah.

13 Q. Okay.

14 MS. ROOHANI: A moment's indulgence, Your Honor.  
15 Your Honor, I'll pass the witness.

16 THE COURT: And just to make sure, we're talking  
17 about page 7 of the motion, which is -- oh, I guess I don't  
18 have the motion number.

19 MS. ROOHANI: It's at the top, Your Honor. It  
20 says, "He would get life if convicted."

21 THE COURT: Line 15, "In the courtroom Durham  
22 continued to read the written plea agreement with Rouven."

23 MS. ROOHANI: Yes, Your Honor.

24 THE COURT: All right. I just wanted to make  
25 sure I have the right part.

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1 MS. ROOHANI: If you give me a moment, Your  
2 Honor, I have a lot of stuff up here.

3 THE COURT: Yes.

4 Any other questions, Mr. Roohani, or do you pass  
5 the witness?

6 MS. ROOHANI: Oh, I pass the witness, Your  
7 Honor.

8 THE COURT: All right.

9 All right. Ms. Connolly.

10 REDIRECT EXAMINATION

11 BY MS. CONNOLLY:

12 Q. Jan, you didn't prepare the motion that Ms. Roohani  
13 has been asking you questions about; right?

14 A. No.

15 Q. It was filed before you reviewed it, in fact; right?

16 A. Yes.

17 Q. Okay. And then afterwards, several weeks later, I  
18 presented you with an affidavit -- let me ask you this.

19 When you reviewed the motion, was there any  
20 facts that jumped out to you as being completely false?

21 A. No.

22 Q. Okay. And we have discussed the motion before it  
23 was prepared; right?

24 A. Yes.

25 Q. Okay. So when you signed an affidavit saying that

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1 everything in there was true and correct, were you  
2 referring to every single word written on that motion from  
3 start to finish?

4 MS. ROOHANI: Objection. Leading.

5 THE COURT: I'll let him answer the question.

6 THE WITNESS: No, I thought about the -- the big  
7 picture of the motion.

8 BY MS. CONNOLLY:

9 Q. And the big picture of the motion was generally  
10 everything in there was pretty much true; right?

11 A. Yes.

12 MS. ROOHANI: Objection. Leading.

13 THE WITNESS: I mean, except the case law. You  
14 are the legal expert with that, so I trust your legal  
15 advice.

16 BY MS. CONNOLLY:

17 Q. And in reference to you discussing the case with  
18 Mr. Humphries, you discussed your plea agreement with him  
19 the evening after and the next morning; right?

20 MS. ROOHANI: Objection, leading.

21 THE WITNESS: Well, I don't --

22 THE COURT: Sustained.

23 BY MS. CONNOLLY:

24 Q. You discussed -- when did you discuss the plea  
25 agreement --

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1 A. Okay.

2 Q. -- with Mr. Humphries?

3 A. I came to Henderson, it was like at 6:00, 7:00,  
4 that -- I mean, after -- yeah, they picked us up. So I  
5 came in the --

6 Q. Was it the evening?

7 A. -- evening, early evening, yeah, when we usually  
8 come and they pick us up from court and bring us back.

9 And I came into the unit and passed by his door,  
10 and we had a quick conversation that I signed a plea, and  
11 he asked me how --

12 Q. So you discussed it with him the evening of --

13 MS. ROOHANI: Your Honor, I'm going to -- Your  
14 Honor, I'm going to object on the basis that Ms. Connolly  
15 is cutting off Mr. Fuechtener's answer.

16 MS. CONNOLLY: I'm not -- I'm trying to get --  
17 we can spend another hour doing this. I'm trying -- he's  
18 already testified. I'm trying to get through this.

19 MS. ROOHANI: The same way she objected to mine,  
20 Your Honor, I'm going to object to hers.

21 THE COURT: All right. So let him answer the  
22 question.

23 THE WITNESS: So I came back, passed by his  
24 door, and we had a short talk. And I told him I signed the  
25 plea. And he asked me how many years. And I said there

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1 are no years in the plea.

2 And then the officer, through the PA system,  
3 said, "Fuechtener lockdown," so I had to go to my cell.  
4 And that was the end of that conversation.

5 And then when I had my regular dayroom, my  
6 hour -- everybody gets an hour dayroom within 24 hours,  
7 when I had my next dayroom, which was, I think --  
8 sometimes, I mean, they give it to us at 8:00, sometimes  
9 2:00 at night, at 3:00 in the morning, or at 8:00. So it  
10 was the next time I had dayroom that was I think later that  
11 evening, but it could be the night.

12 It was before the next morning when I came out  
13 the next day and called Jess. So I had then, during my  
14 next regular dayroom I went again and talked to him. And  
15 then he asked me about the points.

16 BY MS. CONNOLLY:

17 Q. So the conversation started the evening you entered  
18 the plea --

19 A. Yes, immediately when I came back.

20 Q. -- and continued through the next day?

21 A. Yes. It was interrupted, and then we had another  
22 conversation during my dayroom.

23 Q. But -- and do you remember specifically the exact  
24 words that were spoken by Mr. Humphries the evening of the  
25 plea and exact words spoken by Mr. Humphries the next day?

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1 A. No.

2 Q. Do you remember the gist of the conversation which  
3 began the evening of and continued through the next day?

4 MS. ROOHANI: Objection. Leading.

5 MS. CONNOLLY: I'm summarizing what he just  
6 stated and asked him if that's accurate.

7 MS. ROOHANI: Objection. Asked and answered.

8 THE COURT: Yeah, either way.

9 MS. CONNOLLY: Okay.

10 BY MS. CONNOLLY:

11 Q. So based upon -- what led you to the determination  
12 that under the terms of the guilty plea agreement, which  
13 you signed in court, you were facing 27 -- a minimum of 27  
14 years under the guidelines?

15 MS. ROOHANI: Objection. Misstates the law.

16 THE COURT: She wasn't trying to state the law.  
17 She's saying what was it that led you to believe that.

18 So he can answer the question. Overruled.

19 MS. ROOHANI: Then it assumes facts not in  
20 evidence. He's not testified that that's what he believed  
21 what it was.

22 MS. CONNOLLY: Are they both objecting?

23 MS. ROOHANI: She's not even --

24 MS. CONNOLLY: Let me withdraw that.

25

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1 BY MS. CONNOLLY:

2 Q. When did you become aware -- who made you aware of  
3 the amount of time you were facing with the base offense  
4 level of 40 or an adjusted offense level of 40?

5 A. Mr. Humphries.

6 Q. And that conversation commenced the evening after  
7 you entered the guilty plea and went on through the next  
8 day; right?

9 A. Yeah. We had to stop. I locked down, and when I  
10 had my next dayroom, the first thing I did, went to his  
11 door, and we finished that conversation.

12 Q. When you were answering my questions, were you  
13 answering to the best of your ability?

14 A. Yes.

15 Q. How much older than you is Frank?

16 MS. ROOHANI: Objection. Relevance.

17 MS. CONNOLLY: They're the ones that are asking  
18 him all the questions about Frank and Joel and who could  
19 potentially be an alternate suspect. It's relevant to  
20 that.

21 MS. ROOHANI: I --

22 THE COURT: Overruled. He can answer the  
23 question.

24 BY MS. CONNOLLY:

25 Q. How much older than you is Frank?



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1 A. 17 years.

2 Q. 17 years. How old were you when Frank met you?

3 MS. ROOHANI: Objection. Relevance.

4 MS. CONNOLLY: It's the same -- it's the same  
5 relevance. If they'll let me finish the questions, you'll  
6 see the relevance.

7 THE COURT: How old he was when he met Frank?

8 MS. CONNOLLY: Well, I think the government is  
9 trying to make an argument, will make an argument that  
10 Frank was not an alternate suspect. Frank's age, the age  
11 difference in when he met Jan is relevant to whether or not  
12 Frank was an alternate suspect as determined by Mr. Nadiq  
13 or Mr. Marchese.

14 MS. ROOHANI: And I don't see how --

15 MS. CONNOLLY: They're the one that opened the  
16 door --

17 MS. ROOHANI: -- it's relevant.

18 MS. CONNOLLY: -- to this by trying to suggest  
19 that Frank was never an alternate suspect, therefore, there  
20 was never a conflict because he wasn't a valid suspect.

21 MS. ROOHANI: I don't understand how  
22 Mr. Alfter's age makes him an alternative suspect, and I  
23 don't understand how they -- when they met makes him an  
24 alternative suspect either, Your Honor.

25 MS. CONNOLLY: How old he was and the fact that

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1 he was very young when a far older man met him and engaged  
2 in sexual relationship with him becomes relevant since it  
3 was kiddy porn that was found on the computers and why his  
4 lawyers believe that Frank was the alternate suspect as  
5 stated by Mr. Nadig in the e-mail.

6 MS. ROOHANI: Assumes facts not in evidence,  
7 Your Honor.

8 MS. CONNOLLY: And they're the ones that are  
9 trying to represent there's no conflict, ergo there was  
10 no -- he wasn't an alternate suspect.

11 THE COURT: You're trying to say it's relevant  
12 because that's why his attorneys thought that there was a  
13 conflict --

14 MS. CONNOLLY: They need a conflict waiver, yes.

15 THE COURT: He didn't ask his attorneys that.  
16 I'm not sure you can get that information out of  
17 Mr. Fuechtener.

18 I mean, it doesn't logically necessarily link to  
19 what the attorneys believed.

20 MS. CONNOLLY: Well, I think he -- at some  
21 point, he became aware that that's what they thought and  
22 the reasons why they thought that Frank was an alternate  
23 suspect.

24 MS. ROOHANI: And I believe Your Honor is  
25 correct, that those are questions that are better posed to

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1 the attorneys and not Mr. Fuechtener.

2 THE COURT: I understand the point you're trying  
3 to make, and I --

4 MS. CONNOLLY: Okay.

5 THE COURT: -- think that's fine. You can argue  
6 it if you want to in closing for this motion today.

7 MS. CONNOLLY: We will.

8 THE COURT: But we're not going to get into  
9 their personal relationship. It's not necessary.

10 BY MS. CONNOLLY:

11 Q. And there were also a lot of questions and about new  
12 business arrangements. And you indicated you had a  
13 business manager; right?

14 A. Yes.

15 Q. And who was your business manager?

16 A. Frank.

17 Q. Okay. Who was the one that was involved with more  
18 of the daily -- I won't say minutia, but I use a better --  
19 the daily business practices of your entertainment?

20 A. He --

21 Q. Who was the one that negotiated the contracts and  
22 read all the contracts?

23 A. He did that.

24 Q. Okay. So would it be fair to say you were the  
25 performer and he was the business person?

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1 MS. ROOHANI: Objection. Leading.

2 BY MS. CONNOLLY:

3 Q. Well, you tell us. Wasn't --

4 A. Well, mainly, yes. But sometimes there were, like,  
5 meetings when he took me with him to the business meetings  
6 to learn, you know, how that all worked. And so then we --  
7 we both talked about those business things. But mainly  
8 that was his part, and I was --

9 Q. And you --

10 A. And he was the -- he did those things, and I was the  
11 talent, how you call that.

12 Q. Okay. And so you had Frank that you trusted, and  
13 you also said you had an attorney, an attorney that was  
14 your business lawyer?

15 A. Yes.

16 Q. Okay. Now, who is it that negotiated the various  
17 contracts that you were asked about? Was that your  
18 business lawyer? Or who negotiated those? Did you  
19 negotiate those contracts?

20 A. No.

21 Q. Okay. Did somebody else negotiate those contracts  
22 on your behalf?

23 A. Yes.

24 Q. And did you trust that person?

25 A. Yes.

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1 Q. And so when that person presented you with a  
2 contract to sign --

3 A. I sign it.

4 Q. Did you believe it -- that person was acting in your  
5 best interests?

6 A. Yeah, of course.

7 Q. Has Mr. Pacitti always been your business attorney,  
8 or was there somebody else?

9 A. No, in Vegas it was always him.

10 Q. Okay. So it would be fair -- so just to summarize,  
11 you were not intricately involved in negotiating those  
12 business contracts, that was the attorney that did that  
13 with the Tropicana on your behalf?

14 A. The legal aspects, yeah, he did. And the -- all  
15 other aspects Frank did and --

16 Q. Were the other --

17 A. -- I became more involved when it was about, like,  
18 actual performance and --

19 Q. Would it be fair to say --

20 A. -- artistic questions.

21 Q. -- there were some things in the contracts about  
22 what the performance would be and then other portions had  
23 to do with legalities?

24 A. Yes. Liability is a big part of these contracts.

25 Q. Would you consider yourself a trusting person?

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1 A. Yes. Very.

2 Q. Now, you indicate -- you made some comment about  
3 some of the documents you may have signed at the time of  
4 the search and that you were in a rush because you had to  
5 do a show. You were telling us about that.

6 THE COURT: You know, speaking of a rush, it's  
7 4:30. So we're obviously not --

8 MS. CONNOLLY: Okay.

9 THE COURT: -- going to be done today with him.  
10 So why don't we go ahead and take a break.

11 MS. CONNOLLY: I can get --

12 THE COURT: Aaron, what was the next date that  
13 you said we had available if we didn't finish today?  
14 Because we have Mr. Humphries also.

15 COURTROOM ADMINISTRATOR: Your Honor, I do  
16 believe we start trial May 7. We are in trial the next  
17 possibly two weeks.

18 THE COURT: Well, we start trial Monday.

19 COURTROOM ADMINISTRATOR: Correct. I believe  
20 May 11 is a good date. We have all day available.

21 MS. CONNOLLY: It's good with me, I think. I  
22 had a trial that's supposed to start that week in state  
23 court, but I don't think it's -- oh, no it got taken off,  
24 so --

25 MS. ROOHANI: And I also have a trial that's

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1 supposed to start in front of -- Mr. Humphries' trial  
2 that's supposed to start in front of Judge Gordon, Your  
3 Honor, on the 7th.

4 MS. CONNOLLY: May 11 works, though.

5 THE COURT: Okay. And I have four trials that  
6 day. But you don't think any of those are going to go,  
7 Aaron?

8 COURTROOM ADMINISTRATOR: Your Honor, the  
9 criminal cases might go. They're getting to that point  
10 where they may go. But I haven't heard yet from the  
11 attorneys.

12 MS. ROOHANI: Your Honor, do you have any  
13 availability on May the 4th?

14 THE COURT: That's also what I was thinking.

15 MS. CONNOLLY: I don't think -- I have --  
16 well --

17 THE COURT: I'm sorry. What was that, you  
18 can't --

19 MS. CONNOLLY: I have a Mandarin client who I  
20 have been appointed to represent, and I haven't gone to see  
21 her yet because we couldn't get an interpreter. I'm  
22 supposed to go out there and see her.

23 THE COURT: On May 4th?

24 MS. CONNOLLY: And I haven't met with her yet.  
25 On May 4th, yes.

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1                   If it was a non-Mandarin speaking, I wouldn't  
2 quibble with it, but --

3                   THE COURT: Can we do it Thursday afternoon, the  
4 3rd? Why did we have that --

5                   MS. CONNOLLY: Which date?

6                   COURTROOM ADMINISTRATOR: Your Honor, we have  
7 the 3rd blocked off for trial.

8                   THE COURT: Yeah. I was going to say, was that  
9 our extra day for trial --

10                  MS. CONNOLLY: I have a trial that afternoon.  
11 And I have a whole bunch of state stuff that morning.

12                  MS. ROOHANI: Can we do a half day on the 4th,  
13 Your Honor, perhaps in the afternoon?

14                  THE COURT: That was what I was looking at. I'm  
15 in court in the morning, but we had the afternoon --

16                  MS. CONNOLLY: Which day?

17                  THE COURT: -- blocked off for trial.

18                  MS. ROOHANI: On the 4th.

19                  COURTROOM ADMINISTRATOR: It's the 4th.

20                  THE COURT: I was trying to figure out if that  
21 was the last day of trial or if that was the extra last  
22 day. Sometimes they go over.

23                         So let's just go ahead and set it then for May  
24 7th.

25                  MS. CONNOLLY: May 7th?



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1 MS. ROOHANI: Your Honor, I'm in trial that day.

2 MS. CONNOLLY: I'm available that day.

3 MS. ROOHANI: Actually, Mr. Humphries is also  
4 not available because he'll also be in trial that day, Your  
5 Honor.

6 MS. CONNOLLY: It's going to go?

7 MS. ROOHANI: Absolutely.

8 THE COURT: On May 11? Are you in trial on  
9 Fridays?

10 MS. CONNOLLY: The 11th, I believe I'm available  
11 on the 11th.

12 MS. ROOHANI: If we can do it on the afternoon,  
13 just so I can make sure that -- I think by then we'll be  
14 done with trial.

15 THE COURT: Okay.

16 MS. CONNOLLY: That's fine.

17 THE COURT: Does that work, Aaron?

18 COURTROOM ADMINISTRATOR: Yes, Your Honor.  
19 We'll start at 1:00, Your Honor?

20 THE COURT: What time?

21 COURTROOM ADMINISTRATOR: 1:00.

22 THE COURT: Yeah.

23 MS. CONNOLLY: What was that date -- I'm  
24 sorry -- again? The 11th?

25 COURTROOM ADMINISTRATOR: Friday, May 11, at

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1 1:00 p.m.

2 THE COURT: All right. So we'll see you back  
3 here Friday, May 11, at 1:00 p.m.

4 MS. ROOHANI: Your Honor, just one brief point.

5 Before the hearing today, I observed  
6 Ms. Connolly talking to Mr. Fuechtener I believed about the  
7 content of his testimony. So I'm just going to ask that  
8 she not talk to him about the content of his testimony  
9 between now and the time that we come back, since he is in  
10 the middle of his testimony.

11 THE COURT: All right. That will be the order.

12 MS. ROOHANI: Thank you, Your Honor.

13 COURTROOM ADMINISTRATOR: Your Honor, one final  
14 thing. Will the previous order regarding Mr. Humphries and  
15 Mr. Fuechtener's contact --

16 THE COURT: Yes, that will continue.

17 COURTROOM ADMINISTRATOR: Okay. Thank you, Your  
18 Honor.

19 MS. CONNOLLY: And the marshals will transport  
20 him?

21 COURTROOM ADMINISTRATOR: Off record.

22 MS. CONNOLLY: Thank you.

23 THE COURT: All right. Thank you.

24 (The proceedings concluded at 4:34 p.m.)

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I certify that the foregoing is a correct  
transcript from the electronic sound recording  
of the proceedings in the above-entitled matter.



4/30/18

Donna Davidson, RDR, CRR, CCR #318  
Official Reporter

Date